Supreme Court, U.S.
FILED
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No. 99147 3 FEB 22 2000

In The

Supreme Court of the United States

STATE OF LOUISIANA, THROUGH THE HONORABLE MURPHY J. FOSTER, GOVERNOR, THE HONORABLE RICHARD P. IEYOUB, ATTORNEY GENERAL, AND THE SUPERVISORY COMMITTEE ON CAMPAIGN FINANCE DISCLOSURE AND THE DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONS, AND THE LOUISIANA GAMING CONTROL BOARD,

Petitioners,

v.

CLAUDE M. PENN, JR., GLADNEY L. MANUEL, JR., FELICIANA VENTURES, INC., AND MANUEL'S I-10 AUTO & TRUCK STOP, INC.,

Respondents.

On Petition For Writ Of Certiorari To The Supreme Court Of Louisiana

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

Did the Louisiana Supreme Court err when it declared the provision of Louisiana law which prohibits persons substantially interested in the video poker gaming industry from making campaign contributions to be unconstitutional under the First and Fourteenth Amendments of the United States Constitution?

Did the Louisiana Supreme Court err by failing to distinguish between corporations and individuals when analyzing the legislative prohibition on campaign contributions from persons substantially interested in the video poker gaming industry?

PARTIES TO THE PROCEEDING

The caption of the case contains the names of all parties to the proceeding.

TABLE OF CONTENTS

Page

Questions Presented for Review i

Parties to the Proceeding ii

Table of Contents..... iii

Table of Authorities v

Citations of Opinions Below 1

Jurisdiction..... 1

Constitutional and Statutory Provisions Involved... 1

Introduction..... 3

Statement of the Case 5

Preliminary Statement 6

Argument 7

A. The Standard of Strict Scrutiny is Not Appropriate in this Case 7

B. The Restrictions on Contributions by Video Poker Interests are Constitutional..... 10

1. The challenged prohibition on gaming contributions does, in fact, serve a sufficiently important state interest 10

2. Persons in the gaming industry have ample opportunity to participate in the political process 14

TABLE OF CONTENTS – Continued

Page

3. The acceptance of the *privilege* and opportunity of engaging in gaming activities carries with it duties and regulations, including limitations on limited rights to participate in the political process 16

4. A different standard of review applies to restrictions on corporate contributions 19

Conclusion 20

Appendix 1 – Opinion of the Louisiana Supreme Court (10/29/99) ....App. 1

Appendix 2 – Judgment and Reasons of the District Court .....App. 75

Appendix 3 – Denial of Rehearing by Louisiana Supreme Court (11/24/99).....App. 81

Appendix 4 – Affidavit of Edward J. Steimel ..App. 83

Appendix 5 – Affidavit Testimony of Hillary J. Crain .....App. 88

Appendix 6 – *Gambling and Political Corruption,* by Ronald A. Reno (10/01/97)..App. 94

TABLE OF AUTHORITIES

Page

CASES

Austin v. Michigan Chamber of Commerce, 494 U.S. 652 (1990) 20

Buckley v. Valeo, 424 U.S. 1, 96 S.Ct. 612, 46 L.Ed. 2d 659 (1976) 7, 8, 9, 12, 15, 16

California Medical Association, et al. v. Federal Election Commission, 453 U.S. 182 (1981) 9, 15

Catanese v. Louisiana Gaming Control Board, 97-1426, (La. App. 1 Cir. 5/15/98); 712 So.2d 666 16

Central Hudson Gas & Elec. Corp. v. Public Serv. Comm'n of New York, 447 U.S. 557 (1980) 19

Citizens Against Rent Control v. City of Berkeley, 454 U.S. 290, 102 S.Ct. 434, 70 L.Ed. 2d 492 (1981) 12

Fed. Election Comm'n v. Nat. Conserv. Pol. Action, 470 U.S. 480, 105 S.Ct. 1459, 84 L.Ed. 2d 455 (1985) 12

Fed. Election Comm'n v. Nat. Right to Work Committee, 459 U.S. 197 (1982) 20

First Nat'l Bank of Boston v. Bellotti, 435 U.S. 765 (1978) 20

44 Liquormart, Inc. v. Rhode Island, 517 U.S. 484 (1996) 18

Greater New Orleans Broadcasting Ass'n, Inc. v. United States, 98-387, 527 U.S. ___, 119 S.Ct. 1923 (1999) 18

TABLE OF AUTHORITIES – Continued

Page

Knight v. Margate, 86 N.J. 374, 431 A.2d 833 (1981) 13

Nixon v. Shrink Missouri Government PAC, 98-963, ___ U.S. ___ (2000) 4, 7, 8, 10, 14, 16

Petition of Soto v. State of New Jersey, 236 N.J. Super. 303, 565 A.2d 1088, *certif. denied* 121 N.J. 608 (1989), *cert denied*, 496 U.S. 937 (1990) 4, 12, 13, 21

Posadas de Puerto Rico Ass'n v. Tourism Co., 478 U.S. 328, 106 S.Ct. 2968, 92 L.Ed. 2d 266 (1986) 18

Ricks v. Department of Civil Service, 200 La. 341, 8 So.2d 49 (1942) 18

Schiller Park Colonial Inn v. Berz, 63 Ill.2d 499, 349 N.E.2d 61 (1976) 13, 15

United States Civil Serv. Comm'n v. Ass'n of Letter Carriers, 413 U.S. 548 (1973) 18

CONSTITUTIONAL PROVISIONS

U.S. Constitution, Amendment I ..... *passim*

U.S. Constitution, Amendment XIV, § 1 ..... 3, 4, 6

Louisiana Constitution, Article V, § 5(D) 6

Louisiana Constitution, Article X, § 9 17

Louisiana Constitution, Article XII, § 6(B) 10

STATUTES

2 U.S.C. § 441b(a) 19

Indiana Stats. 4-33-10-2.1 3

TABLE OF AUTHORITIES – Continued

Page

Iowa Stats. 99F.6(4)(a) 3

Kentucky Rev. Stats. 154(a).160 4

Louisiana Rev. Stats. Ann. 18:1505.2(L) ... 1, 3, 5, 12, 19

Louisiana Rev. Stats. Ann. 42:1132B(3)(e) 17

Michigan Stats. 7(b)(4)-(5) 4

Nebraska Stats. 49-1469.01 4

New Jersey § 5:12-138 4

Virginia § 59.1-375, 376 4

OTHER CITATIONS

Federal Election Commission, E. Feigenbaum & J. Palmer, Campaign Finance Law 98 (1998) 19

Gambling and Political Corruption, by Ronald A. Reno, released October 1, 1997 11

Louisiana Administrative Code, Title 42, Rule 107 ...5, 6

Louisiana Code of Judicial Conduct, Canon 7 17

Louisiana Ethics Board Opinion No. 99-424 15

Michigan AG Opinion 7002 (Dec. 17, 1998) 4

The National Gambling Impact Study Commission, Executive Summary (June 1999) 4

United States Supreme Court Rule 10 21

CITATIONS OF OPINIONS BELOW

The opinion of the Louisiana Supreme Court was entered in this matter on October 29, 1999, Docket No. 99-2337, ___ So.2d ___.

Rehearing was denied by the Louisiana Supreme Court on November 24, 1999, No. 99-2337, ___ So.2d ___.

The opinion of the 19th Judicial District Court, Docket No. 458,208, Division N, announced on June 4, 1999, and signed on June 15, 1999, was not published.

JURISDICTION

Judgment was entered by the Louisiana Supreme Court on October 29, 1999. Rehearing was denied on November 24, 1999.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Louisiana Revised Statutes 18:1505.2(L)(3)(a)(i) and 18:1505.2(L)(3)(b)(i):

> L.(1) The legislature recognizes that it is essential to the operation of effective democratic government in this state that citizens have confidence in the electoral process and that elections be conducted so as to prevent influence and the appearance of influence of candidates for public office and of the election process by

special interests, particularly by persons substantially interested in the gaming industry in this state.

(2) No person to whom this Subsection is applicable as provided in Paragraph (3) of this Subsection shall make a contribution, loan, or transfer of funds, including but not limited to any in-kind contribution, as defined in this Chapter, to any candidate, any political committee of any such candidate, or to any other political committee which supports or opposes any candidate.

(3) This Subsection shall be applicable to the following:

(a)(i) Any person who holds a license or permit as a distributor of gaming devices, who holds a license or permit as a manufacturer of gaming devices, who holds a license or permit as a device services entity, and any person who owns a truck stop or a licensed pari-mutuel or off-track watering facility which is a licensed device establishment, all pursuant to the Video Draw Poker Devices Control Law.

* * *

(b)(i) Any person who has an interest, directly or indirectly, in any legal entity included in Subparagraph (a) of this Paragraph. "Interest," as used in this Subparagraph, means ownership by an individual or his spouse, either individually or collectively, of an interest which exceeds ten percent of any legal entity. An indirect interest is ownership through any number of layers of legal entities when twenty-five percent or more of each legal entity is owned by the legal

> entity ownership beneath it. LSA-R.S. 18:1505.2L.

First Amendment to the United States Constitution:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Fourteenth Amendment to the United States Constitution, Section 1:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

INTRODUCTION

Louisiana is one of at least eight states which have enacted a ban on campaign contributions to candidates from gaming interests.[1] In the only other state to litigate

[1] Indiana, Ind. Stats. 4-33-10-2.1 (Prohibits contributions from any officer or person who holds an interest in a gaming entity.), Iowa, Iowa Stats. 99F.6(4)(a) (Prohibits contributions from riverboat gambling corporations.), Kentucky, Rev. Stats.

this issue, New Jersey's gaming contribution ban was upheld as constitutional.[2] The Attorney General in Michigan has opined that Michigan's ban on contributions to candidates and their committees by gaming licensees is constitutional.[3] And, the Congressionally created National Gambling Impact Study Commission has recommended that states adopt tight restrictions on contributions to state and local campaigns by entities that have applied for or have been granted the privilege of operating gambling facilities.[4]

It is therefore critical that this Court review the decision of the Louisiana Supreme Court concluding that such a ban resulted in a violation of the First and Fourteenth Amendments of the United States Constitution. This Court recently upheld the contribution limits enacted by the State of Missouri and challenged in the case of *Nixon v. Shrink Missouri Government PAC*.[5] The

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154(a).160 (Prohibits contributions from persons owning lottery contracts.), Michigan, Mich. Stats. 7(b)(4)-(5) (Prohibits contributions from any licensee or person who has an interest in a gaming entity.), Nebraska, Neb. Stats. 49-1469.01 (Prohibits contributions from lottery contractors for duration of contract and three years after.), New Jersey § 5:12-138 (Prohibits contributions from casino officers or key employees.), Virginia, § 59.1-375, 376 (Prohibits contributions from pari-mutual corporations, executives and their spouses and families.)

[2] *Petition of Soto v. State of New Jersey*, 236 N.J. Super. 303, 565 A.2d 1088, *certif. denied* 121 N. J. 608 (1989), *cert denied*, 496 U.S. 937 (1990).

[3] Michigan AG Opinion 7002 (Dec. 17, 1998).

[4] The National Gambling Impact Study Commission, Executive Summary, at 29 (June 1999).

[5] 98-963, ___ U.S. ___ (2000).

issue presented by this writ application is whether a State can constitutionally take the next step of imposing a ban on contributions from a particular source based upon a showing of a sufficiently important governmental interest.

STATEMENT OF THE CASE

In 1996, the Louisiana Legislature legalized various forms of gaming. In conjunction with the creation of the State's gaming industry, the legislature cited the need to prevent influence on the election process by those in the gaming industry, and enacted a prohibition on campaign contributions from persons with a substantial interest in the video poker industry, in riverboat gaming, and in the authorized land based casino.

On May 21, 1999, two individuals and two corporations engaged in the business of video poker joined as plaintiffs in a Petition for Injunctive Relief and Declaratory Judgment filed in the 19th Judicial District Court, East Baton Rouge Parish, Louisiana. That petition alleged that the legislative ban on campaign contributions was unconstitutional based on the First and Fourteenth Amendments of the United States Constitution.

A trial was conducted on June 2, 1999, and the matter was taken under advisement. On June 4, 1999, the trial court announced its ruling, and written judgment was signed on June 15, 1999, declaring unconstitutional LSA-R.S. 18:1505.2(L)(3)(a)(i), LSA-R.S. 18:1505.2(L)(3)(b)(i) insofar as it is applied to LSA-R.S. 18:1505.2(L)(3)(a)(i), and Rule 107 of Title 42 of the Louisiana Administrative

Code, insofar as Rule 107 precludes candidate and political committee contributions by video draw poker licensees. A permanent injunction was issued.

On June 15, 1999, the state agencies and officials named as defendants submitted a motion and order for suspensive appeal. An order of suspensive appeal was granted, returnable to the Louisiana Supreme Court on August 5, 1999.[6]

Oral arguments were presented on September 7, 1999. On October 29, 1999, the Louisiana Supreme Court issued a *per curiam* opinion, concluding by a vote of four to three, that the challenged statutory provisions and the administrative rule were unconstitutional under the First and Fourteenth Amendments of the United States Constitution. A rehearing was requested by the State, and was denied by the Louisiana Supreme Court on November 24, 1999.

PRELIMINARY STATEMENT

The Louisiana Supreme Court issued a *per curiam* opinion declaring the legislative prohibition on campaign contributions from persons in the video poker industry unconstitutional. The opinion failed to provide any reasoning for the decision. Rather, each of the four justices who concurred in the finding of unconstitutionality assigned individual reasons. This style of an opinion, in

[6] Louisiana Constitution Article V, § 5(D) allows for direct appeal to the Louisiana Supreme Court whenever a state statute is invalidated as unconstitutional.

such a pivotal decision, gives little guidance to the Louisiana Legislature and other state and federal courts considering this issue. The lack of a consensus as to the reasons for the decision makes analysis difficult and emphasizes the need for further review.

The Louisiana Supreme Court did not have the benefit of this Court's decision in *Nixon v. Shrink Missouri* that was issued in January 2000.

ARGUMENT

A. The Standard of Strict Scrutiny Is Not Appropriate in this Case.

The district court that reviewed the ban on gaming contributions specifically stated that the standard of strict scrutiny would be applied. In the Louisiana Supreme Court decision, one concurring justice applied the standard of strict scrutiny in assigned reasons, one justice stated that it was unnecessary to declare whether strict scrutiny was the proper standard, and the remaining two concurring justices did not address the issue of the appropriate standard of review.

Strict scrutiny should not have been applied. In *Nixon v. Shrink Missouri*, this Court affirmed the conclusion reached in the 1976 decision in *Buckley v. Valeo*[7] that, although campaign finance regulations operate in an area of First Amendment activities, strict scrutiny is not the proper standard of review. *Buckley* required contribution

[7] 424 U.S. 1, 96 S.Ct. 612, 46 L.Ed. 2d 659 (1976).

limits to be "closely drawn" to further a "sufficiently important" interest.

As stated in *Buckley*, "even a 'significant interference' with protected rights of political association may be sustained if the State demonstrates a sufficiently important interest and employs means closely drawn to avoid unnecessary abridgment of associational freedoms."[8] And, the Court in *Buckley* recognized that **limiting the actuality and appearance of corruption is a sufficiently important governmental purpose to justify limitations on contributions.**

Here, as in *Buckley* and *Nixon v. Shrink Missouri*, restrictions on contributions, not independent expenditures, are at issue. Restrictions on contributions are subject to a less stringent standard of review than restrictions on expenditures. This Court in *Buckley* held as follows:

> [B]y contrast with a limitation upon expenditures for political expression, a limitation upon the amount that any one person or group may contribute to a candidate or political committee entails only a marginal restriction upon the contributor's ability to engage in free communication.[9]

Buckley struck down the restrictions on expenditures within the Federal Election Campaign Act of 1971, while upholding contribution limits.

Campaign contributions are not a direct expression of speech by the contributor. As noted in *Buckley*:

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[8] *Buckley*, at 25.

[9] *Buckley*, at 21.

> While contributions may result in political expression if spent by a candidate or an association to present views to the voters, the transformation of contributions into political debate involves speech by someone other than the contributor.[10]

This concept was further elaborated in *California Medical Association*[11] in which this Court acknowledged that " 'speech by proxy' . . . is not the sort of political advocacy that [the] Court in *Buckley* found entitled to full First Amendment protection."[12]

In the matter now before this Court, strict scrutiny was not the proper standard of review. Rather, the test should have been whether the prohibition was a means closely drawn to further a sufficiently important interest. The ban on campaign contributions by video poker interests is a restriction closely drawn to further the critical governmental interest of preventing improper influence in the election process by legalized and highly regulated gaming interests.

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[10] *Buckley*, at 21.

[11] *California Medical Association, et al. v. Federal Election Commission*, 453 U.S. 182 (1981).

[12] 453 U.S. 182, at 196 (1981).

B. The Restrictions on Contributions by Video Poker Interests Are Constitutional.

1. The challenged prohibition on gaming contributions does, in fact, serve a sufficiently important state interest.

In *Nixon v. Shrink Missouri*, this Court recognized that the "quantum of empirical evidence needed to satisfy heightened judicial scrutiny of legislative judgments will vary up or down with the novelty and plausibility of the justification raised."[13] Therefore, it is important to examine the history and unique characteristics of the gaming industry, which is decidedly different from other segments of Louisiana's business community. Gaming is Louisiana's only legalized vice. Louisiana's Constitution directs the legislature to define and suppress gambling in the state.[14] Therefore, the existence of gaming in this state is only by virtue of the legislative decision to define certain forms of gambling as "gaming" and to allow only limited and highly regulated gaming to occur.

The record in this case presents affidavits outlining the public perception that gaming is associated with political corruption.[15] Further, evidence was presented

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[13] ___ U.S. ___, at ___.

[14] La. Const. Art. XII, § 6(B).

[15] Ethics Exhibit 1, Affidavit of Edward J. Steimel, *see* Appendix 4; and State Exhibit 4, Affidavit of Hillary J. Crain, *see* Appendix 5.

that within the last ten years, nine states, including Louisiana, have had governmental officials prosecuted in gaming cases.[16]

The record also includes statistics as to the staggering sums of money collected by those within the gaming industry. For example, for the fiscal year ending June 30, 1998, truck stops with video poker devices received over $205,000,000 in net device revenues.[17] Revenues of this magnitude would then allow gaming industry members to disproportionately affect the political process if they are allowed to contribute to candidates and committees supporting or opposing candidates.[18] Indeed, one need only look to the money spent by the video poker gaming industry in the 1996 proposition elections in which voters were asked whether they wanted to continue video poker in each parish to illustrate the impact gaming money can have in an election.[19]

The dissenting opinion of Justice Knoll provides a detailed historical analysis of gaming in Louisiana that illustrates why the legislature found it was imperative to prohibit campaign contributions from persons engaged in the gaming industry.[20] Justice Victory, also in dissent,

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[16] Ethics Exhibit 2, *Gambling and Political Corruption*, by Ronald A. Reno, released October 1, 1997, *see* Appendix 6.

[17] State Exhibit 4, Affidavit of Hillary J. Crain, *see* Appendix 5.

[18] Ethics Exhibit 2 cataloged anecdotal evidence of the growing impact of gaming money on the political process.

[19] Ethics Exhibit 3.

[20] *Penn v. State of Louisiana*, 99-2337 (1999) (Knoll, J. dissenting), *see* Appendix, p. 62.

suggested that if a particular industry, such as gaming, raises specific concerns about governmental corruption, then adequate justification for contribution restrictions can be demonstrated.[21]

According to *Buckley* and its progeny, preventing corruption or the appearance of corruption is a legitimate and compelling governmental interest sufficient to limit and restrict campaign finances.[22] The Louisiana Legislature enacted LSA-R.S. 18:1505.2L for the following stated purpose:

> [T]hat it is essential to the operation of effective democratic government in this state that citizens have confidence in the electoral process and that elections be conducted so as to prevent influence and the appearance of influence of candidates for public office and of the election process by special interests, particularly by persons substantially interested in the gaming industry in this state.

The only other reported decision to specifically address the constitutionality of a restriction on campaign contributions by gaming interests is *Petition of Soto, supra.* In *Soto,* the Superior Court of New Jersey held that the state had a compelling interest in "maintaining the integrity of political parties and organizations from undue influence by those individuals who, by the very nature of

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[21] *Id.* (Victory, J. dissenting), *see* Appendix, p. 53.

[22] *Buckley, supra; Citizens Against Rent Control v. City of Berkeley,* 454 U.S. 290, 297, 102 S.Ct. 434, 437, 70 L.Ed. 2d 492 (1981); *Fed. Election Comm'n v. Nat. Conserv. Pol. Action,* 470 U.S. 480, 496-97, 105 S.Ct. 1459, 1468, 84 L.Ed. 2d 455 (1985).

their employment, play a pivotal role in the casino industry."[23] The New Jersey court commented:

> Gambling is an activity rife with evil, so prepotent its mischief in terms of the public welfare and morality that it is governed directly by the [New Jersey] Constitution itself.[24]

In further support of the governmental purpose sought to be achieved by the ban on campaign contributions by gaming licensees, the New Jersey court noted:

> Given the acknowledged vulnerability of the casino industry to organized crime and the compelling interest in maintaining the public trust, not only in the casino industry, but also the governmental process which so closely regulates it, *Greenberg*, 99 N.J. at 574, there is no viable alternative available to prevent the appearance of, or actual, corruption on the political process in New Jersey. As noted by Justice Pollock in *Greenberg* "a perception that any improper influence has infiltrated the [regulatory and judicial] processes, however slightly, would undermine the trust that is essential to the continued confidence in the industry and, what is more important, in state government."[25]

A similar type of ban on contributions by a particular industry was upheld by the Illinois Supreme Court in the case of *Schiller Park Colonial Inn, Inc. v. Berz*.[26] An Illinois

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[23] *Soto*, at 1098.

[24] *Soto*, at 1097, quoting from *Knight v. Margate*, 86 N.J. 374, 431 A.2d 833 (1981).

[25] *Soto*, at 1098.

[26] 63 Ill.2d 499, 349 N.E.2d 61 (1976).

statute made it illegal for any liquor licensee, or company representative, to contribute directly or indirectly to a political party or candidate. The ban was upheld and the court noted that the legislature was allowed to ban contributions of any amount, not just large contributions.

The Illinois court stated that the "nature of the liquor industry is a prime consideration in judging the validity" of the ban on liquor licensees making campaign contributions.[27] The same consideration is presented when analyzing the ban on video poker interests making campaign contributions.

This type of reasoning is consistent with this Court's statement in *Nixon v. Shrink Missouri* that judicial scrutiny of legislative judgments varies with the novelty and the plausibility of justification in support of a restriction on contributions. Given the history of the gambling industry and its connection to public corruption, it is completely plausible, and not at all novel, for the Louisiana Legislature to have concluded that it was necessary to distance video poker interests from the ability to contribute to candidates and political committees which support candidates.

2. Persons in the gaming industry have ample opportunity to participate in the political process.

There are ample opportunities for those in the gaming industry to fully develop their First Amendment rights in the political process other than through making

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[27] 349 N.E.2d 61, at 65.

campaign contributions to candidates or committees. For example, they may make independent expenditures supporting or opposing particular candidates without limitation. Further, gaming entities may urge their employees to support or oppose particular candidates, and corporate officers and employees may demonstrate their individual support of candidates by displaying yard signs and/or volunteering to work in campaigns. Gaming companies may even sponsor phone banks designed to encourage persons to vote.[28]

The decisions in *Schiller Park*, *Buckley*, and *California Medical Association* each recognize the distinction between direct speech and the type of "speech by proxy" represented by campaign contributions.

The Illinois court in *Schiller Park* stated:

> [The contribution ban] does not prohibit liquor licensees from engaging in any type of "pure speech." For example, those individuals, of course, may express their political opinions to anyone who will listen. They may announce their support for candidates or political parties. They also can express their political opinions by exercising their voting rights. Additionally, nothing . . . prohibits liquor licensees from joining political parties or groups or from volunteering services to those parties or groups.

And, as stated by this Court in *Buckley* and quoted in *California Medical Association*:

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[28] Louisiana Ethics Board Opinion No. 99-424.

> While contributions may result in political expression if spent by a candidate or an association to present views to the voters, the transformation of contributions into political debate involves speech by someone other than the contributor.[29]

Justice Stevens, in his concurring opinion in *Nixon v. Shrink Missouri,* elaborated on the speech by proxy concept by stating:

> Speech has the power to inspire volunteers to perform a multitude of tasks on a campaign trail, on a battleground, or even on a football field. Money meanwhile, has the power to pay hired laborers to perform the same tasks. It does not follow, however, that the First Amendment provides the same measure of protection to the use of money to accomplish such goals as it provides to the use of ideas to achieve the same results.[30]

3. The acceptance of the *privilege* and opportunity of engaging in gaming activities carries with it duties and regulations, including limitations on limited rights to participate in the political process.

Obtaining a license to engage in gaming activities is a highly regulated **privilege** conferred by the state and on terms and conditions carefully prescribed by the state.[31] Moreover, it is a lucrative privilege that entails significant

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[29] 424 U.S., at 21 and 453 U.S., at 196.

[30] *Nixon v. Shrink Missouri Government PAC,* 98-963, ___ U.S. ___ (2000) (Stevens, J. concurring).

[31] *Catanese v. Louisiana Gaming Control Board,* 97-1426, (La. App. 1 Cir. 5/15/98); 712 So.2d 666 at 670.

monetary advantages. As previously noted, video gaming truck stops in Louisiana collected over $200 million in a single year. In exchange for the ability to reap these huge returns in an industry with governmentally limited participants, licensed gaming entities and individuals are obliged to forego limited political rights. The situation is little different from that involving classified civil servants in Louisiana and at the federal level, members of the Louisiana Civil Service Commission,[32] judges in Louisiana,[33] and members of the Louisiana Board of Ethics.[34]

Louisiana civil service employees and commissioners, and, for that matter, Ethics Board members are legislatively required to surrender their "rights" to make campaign contributions as well as engage in other political activity in consideration of the appointment to highly discretionary governmental positions. Judges are likewise severely limited in their political expression. Licensed and regulated gaming interests are surely no different: by seeking out these discretionary and potentially lucrative governmental permits and – corresponding business opportunities – it is responsible, and constitutionally permissible, for the state to tax these applications with reasonable and narrowly tailored restraints against certain types of campaign contributions.

Indeed, courts have long upheld restrictions on the political activities of federal and state civil servants which are much more extensive than the restrictions at

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[32] La. Const. Art X., § 9.

[33] La. Code of Judicial Conduct, Canon 7.

[34] LSA-R.S. 42:1132B(3)(e).

issue here.[35] This Court has concluded in such cases that "[n]either the right to associate nor the right to participate in political activities is absolute."[36]

The cases of *Posadas*,[37] *44 Liquormart*,[38] and *Greater New Orleans Broadcasting*[39] were cited by several of the concurring justices as contrary to the argument that the receipt of a gaming license is a privilege justifying the waiver of the ability to make campaign contributions. The cited cases do not support this conclusion.

Posadas involved a challenge to Puerto Rico's ban on the advertisement of casino gambling. That ban was upheld, but, the decision of the Court was later rejected in *44 Liquormart*, which found unconstitutional Rhode Island's liquor price advertising ban. *Greater New Orleans Broadcasting* struck down a federal prohibition on radio and television advertisements of privately operated commercial casino gambling.

Posadas, *44 Liquormart*, and *Greater New Orleans Broadcasting* each involved direct restraint on commercial

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[35] See *Ricks v. Department of Civil Service*, 200 La. 341, 8 So.2d 49 (1942).

[36] *United States Civil Serv. Comm'n v. Ass'n of Letter Carriers*, 413 U.S. 548 at 567 (1973).

[37] *Posadas de Puerto Rico Assoc. v. Tourism Co.*, 478 U.S. 328, 106 S.Ct. 2968, 92 L.Ed. 2d 266 (1986).

[38] *44 Liquormart, Inc. v. Rhode Island*, 517 U.S. 484 (1996).

[39] *Greater New Orleans Broadcasting Ass'n, Inc. v. United States*, 98-387, 527 U.S. ___, 119 S.Ct. 1923 (1999).

speech. The four-part test enumerated in *Central Hudson*[40] was invoked in each instance to analyze the statutes at issue.

Here, commercial speech is not the issue. Rather, the ban on campaign contributions by persons in the video poker industry at most represents a restriction on the speech by proxy aspect of the defined gaming interests' participation in the political process.

The persons subject to the limited political restrictions at issue in R.S. 18:1505.2L accept those restrictions for the privilege of engaging in gaming activities. Given the interest of the State of Louisiana in avoiding the appearance of corruption by gaming interests influencing candidates through campaign contributions, the trade-off required is constitutional.

4. A different standard of review applies to restrictions on corporate contributions.

Corporate contributions to candidates and candidate committees have long been prohibited completely at the federal level.[41] Twenty-two states also ban corporate contributions.[42] No reported federal decision deals explicitly with the constitutionality of that ban. However, this Court has recognized that states have a compelling interest in seeing that the "substantial aggregations of wealth

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[40] *Central Hudson Gas & Elec. Corp. v. Public Serv. Comm'n of New York*, 447 U.S. 557 (1980).

[41] 2 U.S.C. § 441b(a).

[42] See generally, Chart 2A, Federal Election Commission, E. Feigenbaum & J. Palmer, Campaign Finance Law 98 (1998).

amassed by the special advantages which go with the corporate form of organization . . . not be converted into political 'war chests' which could be used to incur political debts from legislators."[43] In *Austin v. Michigan Chamber of Commerce*, a ban on corporate independent expenditures as to candidates was upheld when it was found to be narrowly tailored to serve the government's anti-corruption interest.[44] This Court in *Austin* noted that the corporate form grants economic advantages such as "limited liability, perpetual life, and favorable treatment of the accumulation and distribution of assets."[45]

Therefore, in evaluating whether the restrictions on gaming contributions are constitutional, this Court should examine the application of those restrictions to the corporate plaintiffs in a different light than those same restrictions as applied to the individual plaintiffs. The ban as to corporate contributions from those in the gaming industry clearly meets the constitutional test.

CONCLUSION

Significant and important governmental interests will be compromised if the decision of the Supreme Court of Louisiana is not reversed by this Honorable Court.

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[43] *Fed. Election Comm'n v. Nat. Right to Work Committee*, 459 U.S. 197, 207 (1982).

[44] 494 U.S. 652 (1990). *Cf. First Nat'l Bank of Boston v. Bellotti*, 435 U.S. 765 (1978) which concluded that corporate expenditures as to referendum proposals could not be banned.

[45] *Austin*, at 658-659.

The decision of the Louisiana court is in direct contradiction to decisions of the highest courts in Illinois and in New Jersey. These conflicting decisions emphasize the need to review the decision of the Louisiana court which rejects the legislature's attempt to limit the ability of gaming interests to directly influence candidates for elected office.[46]

The legalization of gambling continues to expand in Louisiana and elsewhere. The national commission created by Congress to study its impact has recommended tight restrictions on campaign contributions from gambling sources. The challenged Louisiana legislation was enacted prior to the publication of this important study. Seven other states have similar restrictions. As great deference should be given to a legislative determination that campaign contributions from certain sources can lead to the appearance of corruption in the electoral process, these statutes should not be overturned, as was done by the Louisiana court, absent a clear abridgement of a First Amendment right.

This case presents an important federal question which has not been, but should be, settled by Your Honors.[47] In 1990, this Court declined to consider the *Soto* case from New Jersey. The opportunity has now arisen again for Your Honors to resolve this important point of public policy, as this issue will surely not go away.

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[46] The Rules of this Court include as a "compelling reason" for writ review the circumstance, such as here, when "a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort . . . " U.S. S.Ct. Rule 10(b).

[47] U.S. S.Ct. Rule 10(c).

Legislatures have prohibited civil service employees, members of certain boards and commissions, governmental contractors, and certain regulated entities from making campaign contributions. These restrictions are appropriately balanced against benefits received from governmental service, payments, or limited monopoly status. The Louisiana statute at issue serves the compelling governmental purpose of limiting the appearance of corruption by prohibiting gaming interests from making campaign contributions.

It is therefore respectfully submitted that this Petition for Writ of Certiorari be granted and the judgment of the Supreme Court of Louisiana be reversed.

Respectfully submitted,

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APPENDIX 1

SUPREME COURT OF LOUISIANA

NO. 99-CA-2337

CLAUDE M. PENN, JR., GLADNEY L. MANUEL, JR., FELICIANA VENTURES, INC., AND MANUEL'S I-10 AUTO & TRUCK STOP, INC.

v.

STATE OF LOUISIANA, THROUGH THE HONORABLE MURPHY J. FOSTER, JR., GOVERNOR, THE HONORABLE RICHARD P. IEYOUB, ATTORNEY GENERAL, THE SUPERVISORY COMMITTEE ON CAMPAIGN FINANCE DISCLOSURE AND THE DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONS, LOUISIANA GAMING CONTROL BOARD

ON APPEAL FROM THE NINETEENTH JUDICIAL DISTRICT COURT, PARISH OF EAST BATON ROUGE, HONORABLE JEWEL E. WELCH, JUDGE

(Filed Oct. 29, 1999)

PER CURIAM*

In May 1999, plaintiffs, holders of video draw poker licenses, filed suit against the State of Louisiana, challenging certain statutes passed in the 1996 legislative

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* Marcus, J., not on panel. Rule IV, Part II, § 3.

[/s/ Calogero, C.J. assigns concurring reasons
Kimball, J. assigns concurring reasons
Johnson, J. assigns concurring reasons
Lemmon, J. assigns concurring reasons
Victory, J. dissents and assigns reasons
Knoll, J. dissents and assigns reasons (By JPV)
Traylor, J. dissents for the reasons assigned by Justices Victory and Knoll (by JPV)]

session which restricted their right to contribute to candidates or political committees of candidates. The district court declared unconstitutional "LSA-R.S. 18:1505.2(L)(3)(a)(i), LSA-R.S. 18:1505.2(L)(3)(b)(i) insofar as it is applied to LSA-R.S. 18:1505.2(L)(3)(a)(i), and Rule 107 of Title 42 of the Louisiana Administrative Code, insofar as Rule 107 precludes candidate and political committee contributions by video draw poker licensees." The district court also permanently enjoined the defendants from enforcing these provisions. The State suspensively appealed that judgment to this Court pursuant to La.Const. Art. V, § 5(D).

Although the provisions at issue were enacted in 1996, plaintiffs did not file suit until May 1999, and the appeal did not reach this Court until August 1999. The case was heard and submitted for decision on September 7, 1999.

We hereby render judgment on this date, consisting of this decree and the concurring and dissenting opinions by the justices on this panel.

DECREE

The judgment of the district court is **AFFIRMED**. LSA-R.S. 18:1505.2(L)(3)(a)(i), and LSA-R.S. 18:1505.2(L)(3)(b)(i) insofar as it applies to LSA-R.S. 18:1505.2(L)(3)(a)(i), are declared unconstitutional under the First and Fourteenth Amendments to the United

States Constitution.[2] Rule 107 of Title 42 of the Louisiana Administrative Code, insofar as it precludes candidate and political committee contributions by video draw poker licensees, is likewise invalid, and defendants are permanently enjoined from enforcing the Rule.

SUPREME COURT OF LOUISIANA

NO. 99-CA-2337

CLAUDE M. PENN, JR., GLADNEY L. MANUEL, JR., FELICIANA VENTURES, INC., AND MANUEL'S I-10 AUTO & TRUCK STOP, INC.

VERSUS

STATE OF LOUISIANA, THROUGH THE HONORABLE MURPHY J. FOSTER, JR., GOVERNOR, THE HONORABLE RICHARD P. IEYOUB, ATTORNEY GENERAL, THE SUPERVISORY COMMITTEE ON CAMPAIGN FINANCE DISCLOSURE AND THE DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONS, LOUISIANA GAMING CONTROL BOARD

ON APPEAL FROM THE NINETEENTH JUDICIAL DISTRICT COURT, PARISH OF EAST BATON ROUGE, HONORABLE JEWEL E. WELCH, JUDGE

/s/BJJ JOHNSON, J., Concurring

During the First Extraordinary Session of 1996, the Louisiana Legislature passed Act 67 which enacted La.

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[2] We note that other sections of LSA-R.S. 18:1505.2(L) also prohibit certain persons from contributing to candidates and political committees of candidates. Those other sections are not under attack in this lawsuit. Therefore, we do not consider their validity in this opinion.

Rev. Stat. § 18:1505.2(L) relative to campaign finance. The provisions of La. Rev. Stat. § 18:1505.2(L) prohibit certain persons from making campaign contributions, loans, or transfers of funds to any candidate, any political committee of any such candidate, or any other political committee which supports or opposes any candidate. By enacting the provisions of La. Rev. Stat. § 18:1505.2(L), the legislature intended to promote confidence in the electoral process, and protect candidates and the election process from both real and perceived influence by special interests, particularly persons involved in the gaming industry of this state. The statute impacts persons holding a license or permit to distribute, manufacture, or service gaming devices and persons who own truck stops or licensed pari-mutuel or off-track wagering facilities that are licensed device establishments. Any person who has more than a ten percent interest directly, or a twenty-five percent interest indirectly, in any of the aforementioned legal entities is affected by the statute. The portions of La. Rev. Stat. Ann. § 18:1505.2(L) pertinent to the resolution of this case provide:

> (1) The legislature recognizes that it is essential to the operation of effective democratic government in this state that citizens have confidence in the electoral process and that elections be conducted so as to prevent influence and the appearance of influence of candidates for public office and of the election process by special interests, particularly by persons substantially interested in the gaming industry in this state.
>
> (2) No person to whom this Subsection is applicable as provided in Paragraph (3) of this

Subsection shall make a contribution, loan, or transfer of funds, including but not limited to any in-kind contribution, as defined in this Chapter, to any candidate, any political committee of any such candidate, or to any other political committee which supports or opposes any candidate.

(3) This Subsection shall be applicable to all of the following:
(a)(i) Any person who holds a license or permit as a distributor of gaming devices, who holds a license or permit as a manufacturer of gaming devices, who holds a license or permit as a device service entity, and any person who owns a truck stop or a licensed pari-mutuel or off-track wagering facility which is a licensed device establishment, all pursuant to the Video Draw Poker Devices Control Law.

* * * *

(b)(i) Any person who has an interest, directly or indirectly, in any legal entity included in Subparagraph (a) of this Paragraph. "Interest", as used in this Subparagraph means ownership by an individual or his spouse, either individually or collectively, of an interest which exceeds ten percent of any legal entity. An indirect interest is ownership through any number of layers of legal entities when twenty-five percent or more of each legal entity is owned by the legal entity ownership beneath it.

The present litigation also challenges Emergency Rule 107 as promulgated by the Louisiana Gaming Control Board in August, 1996. The Rule provides standards of conduct and ethical rules for members of the Gaming Control Board, their family members, employees of the

Board, and all licensees of the Board. In pertinent part it provides:

> 6.b. No casino operator or any other licensee or permittee shall make a contribution or loan to, or expenditure on behalf of, a candidate or committee.

La. Admin. Code tit. 42, § 107.

The plaintiffs in this matter are persons who own truck stops licensed under the Video Draw Poker Devices Control Law as device establishments. They contend that La. Rev. Stat. Ann. § 18:1505.2(L)(3)(a)(i), La. Rev. Stat. Ann. § 18:1505.2(L)(3)(b)(i), and La. Admin. Code tit. 42, § 107 are violative of the First and Fourteenth Amendments of the United States Constitution, the equal protection provisions of Art. I, § 3 of the Louisiana Constitution, the freedom of expression and right of assembly and petition provisions in Art. I, §§ 7 and 9 of the Louisiana Constitution. Other persons prohibited from making campaign contributions by La. Rev. Stat. Ann. § 18:1505.2(L) have not joined in this litigation.[1]

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[1] La. Rev. Stat. Ann. § 18:1505.2(L)(3) also provides the following:

> (a)(ii) Any person who holds a license to conduct gaming activities on a riverboat, who holds a license or permit as a distributor or supplier of gaming devices or gaming equipment including slot machines, or who holds a license or permit as a manufacturer of gaming devices or gaming equipment including slot machines issued pursuant to the Louisiana Riverboat Economic Development and Gaming Control Act, and any person who owns a riverboat upon which gaming activities are licensed to be conducted.

Louisiana is one of eight states which has enacted a ban on campaign contributions by the gaming industry.[2] The most recent expression by this Court on restrictions

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(a)(iii) Any person who holds a license or entered into a contract for the conduct of casino gaming operations, who holds a license or permit as a distributor of gaming devices or gaming equipment including slot machines, or who holds a license or permit as a manufacturer of gaming devices or gaming equipment including slot machines issued pursuant to the Louisiana Economic Development and Gaming Corporation Act, and any person who owns a casino where such gaming activities are licensed.

(b)(ii) Any holding, intermediary, or subsidiary company of any person included in Subparagraph (a) of this Paragraph and any officer, director, trustee, or partner thereof.

(c) Any officer, director, trustee, partner, or senior management level employee or key employee as defined in R.S. 27:205(19) of any person included in Subparagraph (a) or (b) of this Paragraph.

(d) Any person subject to the provisions of R.S. 27:63(C)(4), 226(C)(4) or 261(D).

(e) The spouse of any person to whom this Subsection is made applicable by this Paragraph.

[2] Indiana, Iowa, Kentucky, Michigan, Nebraska, New Jersey and Virginia have statutes prohibiting contributions to candidates by certain employees in the gaming industry. The New Jersey Superior Court has addressed the constitutionality of its provisions in *Petition of Soto v. State of New Jersey*, 236 N.J.Super. 303, 565 A.2d 1088, *certif. denied*, 121 N.J. 608 (1989), and found the prohibition constitutional. The Michigan Attorney General has rendered an opinion that the Michigan statute is constitutional. *See* Michigan AG Opinion 7002 (Dec. 17, 1998).

in the gaming industry came in *Brown v. State through Dept. of Public Safety*, 96-2204 (La. 10/15/96), 680 So.2d 1179, addressing the constitutionality of La. Rev. Stat. Ann. § 27:13(C)(6). In declaring the statute unconstitutional, we concluded that the prohibition on contributions to committees supporting or opposing ballot measures suppressed the free flow of information protected by the First Amendment. *Id.*, p. 10, 680 So.2d at 1183. This case presents the question left unanswered in *Brown*, that is whether the First Amendment protects campaign contributions to individual candidates and committees supporting or opposing those candidates.

The First Amendment provides that "Congress shall make no law . . . abridging the freedom of speech." U.S. Const. amend. I. The Fourteenth Amendment makes this most important guarantee applicable to the states as well as the Congress. This guaranteed freedom of speech is essential to our society and a basic element of our fundamental law. The jurisprudence recognizes that the First Amendment reflects a "profound national commitment" to the principle that "debate on public issues should be uninhibited, robust, and wide-open." *New York Times Co. v. Sullivan*, 376 U.S. 254, 270, 84 S.Ct. 710, 721, 11 L.Ed.2d 686 (1964). Commitment to this principle lends itself to the protection of campaign contributions and political speech.

The United States Supreme Court's decision in *Buckley v. Valeo*, 424 U.S. 1, 96 S.Ct. 612, 46 L.Ed. 2d 659 (1976), marks the inception of modern campaign finance jurisprudence, and is the seminal case on campaign contributions and expenditures in the context of First Amendment rights. It is only fitting that the resolution of this case

start with *Buckley*. In addressing the contribution and expenditure limitations imposed by the 1974 amendments to the Federal Election Campaign Act of 1971, the *Buckley* Court concluded that limitations on campaign contributions do not violate the First Amendment of the Constitution. However, limitations on expenditures were found to be violative of First Amendment rights. In reaching this conclusion, the Court recognized that:

> The Act's contribution and expenditure limitations operate in an area of the most fundamental First Amendment activities. Discussion of public issues and debate on the qualifications of candidates are integral to the operation of the system of government established by our Constitution. The First Amendment affords the broadest protection to such political expression in order "to assure [the] unfettered interchange of ideas for the bringing about of political and social changes desired by the people." *Roth v. United States*, 354 U.S. 476, 484, 77 S.Ct. 1304, 1308, 1 L.Ed. 2d 1498 (1957). . . . . As the Court observed in *Monitor Patriot Co. v. Roy*, 401 U.S. 265, 272, 91 S.Ct. 621, 625, 28 L.Ed. 2d 35 (1971), "it can hardly be doubted that the constitutional guarantee has its fullest and most urgent application precisely to the conduct of campaigns for political office."

Id., at 14-15, 96 S.Ct. at 632.

The Court equated contributing and expending funds with political expression and determined that limitations on these activities implicate First Amendment rights:

> A restriction on the amount of money a person or group can spend on political communication during a campaign necessarily reduces the

> quantity of expression by restricting the number of issues discussed, the depth of their exploration, and the size of the audience reached. This is because virtually every means of communicating ideas in today's mass society requires the expenditure of money.

Buckley, 414 U.S. at 19, 96 S.Ct. at 634-35 (footnotes omitted). Further, the contribution and expenditure limitations also bear upon the freedom of association:

> Making a contribution, like joining a political party, serves to affiliate a person with a candidate. In addition, it enables like-minded persons to pool their resources in furtherance of common political goals. The Act's contribution ceilings thus limit one important means of associating with a candidate or committee. . . .

Id. at 22, 96 S.Ct. at 636.

In this case, we are faced with statutory provisions that prohibit, as opposed to limit, contributions. *Buckley* recognized that placing limits on the amount that any one person or group may contribute to a candidate has a marginal restriction on that contributor's ability to engage in free communication. 424 U.S. at 20, 96 S.Ct. At 635. However, the persons included in La. Rev. Stat. Ann. §§ 18:1505.2(L)(3)(a)(i), 18:1505.2(L)(3)(b)(i), and La. Admin. Code tit. 42, § 107 are not allowed to engage in free communication, nor are they allowed to affiliate with a candidate by making a contribution. Clearly these prohibitory provisions impinge upon First Amendment rights. Thus, the State's enactment of these provisions must withstand strict scrutiny in order to be upheld.

The State argues that *Buckley* does not require strict scrutiny for contribution limits, but only requires that limits be "closely drawn" to further a "sufficiently important" interest. The analysis employed in *Buckley*, while using different terms, still requires that the government meet an exacting standard to justify interfering with the right to participate in political activities. Further, the fact that the State has completely removed the right to contribute evidences far more interference than the marginal restriction recognized in *Buckley*.

"[T]he First Amendment means that government has no power to restrict expression because of its message, its ideas, its subject matter, or its content." *Police Department of Chicago v. Mosley*, 408 U.S. 92, 95, 92 S.Ct. 2286, 2290, 33 L.Ed. 2d 212 (1972). A restriction on political speech must be subjected to the most exacting scrutiny, thus, requiring a showing that the "regulation is necessary to serve a compelling state interest and that it is narrowly drawn to achieve that end." *Perry Education Assn. v. Perry Local Educators' Assn.*, 460 U.S. 37, 45, 103 S.Ct. 948, 955, 74 L.Ed. 2d 794 (1983); *See also, Colorado Republican Fed. Campaign Comm. v. Fed. Election Commission*, 518 U.S. 604, 640-642, 116 S.Ct. 2309, 2328, 135 L.Ed. 2d 795 (1996) (Thomas, J., dissenting) ("Curbs on protected speech, we have repeatedly said, must be strictly scrutinized."); *Citizens Against Rent Control v. Berkeley*, 454 U.S. 290, 294, 102 S.Ct. 434, 436, 70 L.Ed. 2d 492 (1981) ("Regulation of First Amendment rights is always subject to exacting judicial review.")

Heretofore, the United States Supreme Court has identified one compelling governmental interest that justifies restrictions on campaign financing: "to limit the

actuality and appearance of corruption resulting from large individual financial contributions." *Buckley*, 424 U.S. at 26, 96 S.Ct. at 638. As the Court explained, the prevention of actual corruption and the appearance of corruption is necessary to preserve our system of democracy:

> Under a system of private financing of elections, a candidate lacking immense personal or family wealth must depend on financial contributions from others to provide the resources necessary to conduct a successful campaign. The increasing importance of the communications media and sophisticated mass-mailing and polling operations to effective campaigning make the raising of large sums of money an ever more essential ingredient of an effective candidacy. To the extent that large contributions are given to secure a political *quid pro quo* from current and potential office holders, the integrity of our system of representative democracy is undermined. . . .
>
> Of almost equal concern as the danger of actual *quid pro quo* arrangements is the impact of the appearance of corruption stemming from public awareness of the opportunities for abuse inherent in a regime of large individual contributions. . . . Here . . . Congress could legitimately conclude that the avoidance of the appearance of improper influence "is also critical . . . if confidence in the system of representative Government is not to be eroded to a disastrous extent."

Id. at 26-27, 96 S.Ct. at 638-39 (citations and footnotes omitted).

Since *Buckley*, the decisions rendered by the United States Supreme Court in the area of campaign finance further explain permissible regulation of campaign contributions and expenditures. The Court has found no danger of corruption in independent expenditures by political action committees ("PACs") or political parties to justify limitations. *See Colorado Republican*, 518 U.S. at 618-19, 116 S.Ct. at 2309. Restrictions on individual contributions relating to initiative campaigns where there is no danger of an improper quid pro quo have been invalidated. *See Citizens Against Rent Control*, 454 U.S. at 298-300, 102 S.Ct. at 438-39. However, the Court upheld restrictions on indirect contributions to candidates, such as contributions to PACs. *See California Medical Ass'n v. Federal Election Comm'n*, 453 U.S. 182, 197-99, 101 S.Ct. 2712, 69 L.Ed. 2d 567 (1981). The corporate right to political expression was expanded with the invalidation of restrictions on corporate expenditures relating to ballot initiatives. *See First National Bank v. Bellotti*, 435 U.S. 765, 784, 98 S.Ct. 1407, 55 L.Ed. 2d 707 (1978). In 1990, the Court upheld restrictions on independent expenditures by corporations finding "the unique state-conferred corporate structure that facilitates the amassing of large treasuries warrants the limit on independent expenditures." *See Austin v. Michigan Chamber of Commerce*, 494 U.S. 652, 660, 110 S.Ct. 1391, 108 L.Ed. 2d 652 (1990). Corporations are still allowed to express their political views through independent expenditures. The Michigan Act simply requires corporations to set-up separate segregated funds for political purposes. Additionally, nonbusiness, political corporations that are formed to promote

political ideas, have no shareholders, and are independent from the influence of business corporations are protected from campaign finance limitations. *See Federal Election Comm'n v. Massachusetts Citizens for Life*, 479 U.S. 238, 263-64, 107 S.Ct. 616, 93 L.Ed. 2d 539 (1986).

In the present matter, the State contends that the provisions of La. Rev. Stat. Ann. § 18:1505.2(L) are necessary to dispel the perception that the gaming industry is associated with political corruption; and, therefore, justifies the abridgement. Admittedly, the prevention of corruption justifies limitations on campaign contributions for individuals and corporations. But, here, the right to contribute has not been limited; the right has been removed. The jurisprudence has recognized no justification for removing the right to contribute. This Court has previously determined that the State may not restrict contributions to political committees organized to communicate ideas under the guise of preventing corruption. *See Brown v. State Through Dept. of Public Safety*, 96-2204 (La. 10/15/96), p. 10; 680 So.2d 1179, 1183. In *Brown*, we stated that "[t]he corruption rationale only applies to candidate or candidate committee limitations." *Id., citing Citizens Against Rent Control*, 454 U.S. at 297, 102 S.Ct. at 438. The State asks that we now extend the corruption rationale to justify excluding entire categories of persons from the political process.

The State posits an actual and a perceived threat of corruption in the gambling industry because of the history of the industry in this State. While we are not blind to Louisiana's history of corruption in the gambling industry, the State offers no support for its contention that these prohibitions will prevent corruption. In

defending a regulation that abridges First Amendment interests, the government "must demonstrate that the recited harms are real, not merely conjectural, and that the regulation will in fact alleviate these harms in a direct and material way." *Turner Broadcasting System, Inc. v. FCC*, 512 U.S. 622, 664, 114 S.Ct. 2445, 2470, 129 L.Ed. 2d 497 (1994). Here, the State has failed to meet this standard in defending the contribution ban.

Moreover, *Buckley* and its progeny recognized that it is the large contributions that threaten to undermine the integrity of our system of representative democracy. *Buckley*, at 26-27, 96 S.Ct. at 638-39. Fixing campaign contribution limits addresses this concern in a direct and material way. Here we are not faced with the threat of large contributions being given by the video poker licensees to secure a political *quid pro quo* because Louisiana's statutory campaign contribution limitations address this concern. *See* La. Rev. Stat. Ann. § 18:1505.2(H)(1)(a). Under the provisions of 18:1505.2(H)(1)(a), contributions for major offices are limited to $5,000; district offices are limited to $2,500; and other offices are limited to $1,000. As such, no video poker licensee, or any other entity, could contribute more money to a candidate or candidate committee than the set limits.

The State also contends that the revenue generated by the video poker industry heightens the perception of corruption associated with the industry. For the fiscal year ending June 30, 1998, the video gaming industry generated $653,375,000 in net gaming proceeds from the devices, and for the fiscal year ending June 30, 1997, the industry generated $618,477,000 in net proceeds.

While these figures would seem to indicate vast accumulations of wealth within the video poker industry, the State's argument overlooks two important considerations. First, the figures relied upon to illustrate the vast revenues held by the video poker industry are the amounts received before the payment of franchise fees to the State. Depending on the type of establishment, these franchise fees range from 22.5% to 32.5% of net proceeds.[3] Thus, of the $653,375,000 generated in 1998, $183,579,000 was paid to the State in franchise fees, leaving a total of $469,796,000 in actual proceeds.[4] The second consideration overlooked is the fact that there are industries in this State that generate revenue far in excess of the sums generated by the video poker industry. The plaintiffs point out that in the list of the top 50 Louisiana companies ranked by net income for 1998, not a single gaming entity is listed. Plaintiffs' Brief, p. 10. Moreover, the top ranked company on the list, Entergy, had net income of $789,500,000 in 1998, far in excess of the entire video poker industry.[5] Plaintiffs' Brief, Exhibit E, *Special Report:*

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[3] Lounges, restaurants, hotels and motels pay 26% of net gaming proceeds to the State in franchise fees. Racetracks (pari-mutuel facilities) and off-track wagering facilities pay 22.5% of net gaming proceeds to the State in franchise fees. Truck stops pay 32.5% of net gaming proceeds to the State in franchise fees.

[4] The 1997 net proceeds of $618,477,000 required a $173,326,000 franchise fee payment, leaving the industry with $445,151,000 in revenue.

[5] It is also apparent from the list of the top 50 companies that there are other industries generating far more revenue than the video poker industry. As the list makes clear, McDermott International Inc. and J. Ray McDermott, S.A, energy services companies, had a combined net income of $409,300,000 for 1998;

Louisiana Inc.: The Pelican State's Top 50 Stocks, Top 50 By Net Income, Times-Picayune (New Orleans), May 16, 1999, at K18). Further, the State has offered no proof that money from the video poker industry is more influential than money from any other special interest group.

More glaring is the exclusion of certain groups under this statutory scheme. The statutes prohibit contributions by distributors, manufacturers, service entities, pari-mutuel facilities, off-track wagering facilities, and truck stops. However, owners of the devices, bars, restaurants, lounges, and clubs are not subject to the prohibition. The threat of actual or perceived corruption would seem to apply as well to actual owners of video poker devices, yet the statute singles out the persons licensed to service, manufacture, and distribute the devices.

For example, the record contains the affidavit of William L. Hall, a device owner who owns and operates approximately 120 video poker devices at various locations in the state, and is not prohibited from making contributions under La. Rev. Stat. Ann. § 18:1505.2(L)(3)(a)(i) or (b)(i). The exclusion of owners from the statute, who are free to own an unlimited number of devices, seems to defeat the stated purpose of preventing corruption.

Likewise, the failure to include restaurants, lounges, and bars in the prohibition contravenes the State's expressed intent. The State contends the statute does not

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CenturyTel Inc., a member of the telecommunications industry, generated $228,800,000 in 1998; while a member of the banking industry, Hibernia Corp., generated $176,900,000 in 1998.

include these locations because these facilities are limited to three devices per establishment. *See* La. Rev. Stat. Ann. § 27:306(A)(2). In contrast, there is no limit on the number of devices which may be placed at off-track wagering and pari-mutuel facilities, and truck stops may operate up to 50 devices. *See* La. Rev. Stat. Ann. § 27:306(A)(3)-(4)(a). Presumably, the more devices a facility is allowed to have, the greater the possibility for corruption. The flaws in this reasoning are made evident when considered with the assertion that the perception of corruption is heightened for the video poker industry because of the high revenues generated by the industry. If the perception of corruption increases with the amount of revenue generated, then the amount of revenue should be the factor for determining inclusion in La. Rev. Stat. Ann. § 18:1505.2(L)(3)(a)(i) and (b)(i), not the number of machines a facility is allowed to have. The included facilities, truck stops, off-track wagering facilities, and pari-mutuel facilities, generated net proceeds of $249,459,000 in fiscal year 1997-1998. While the excluded facilities, restaurants, lounges, and hotels/motels, generated net proceeds of $403,916,000 in fiscal year 1997-1998. If the State's theory is correct, then the perception of corruption should be greatest with the facilities excluded from the statutory prohibition.

The State's final contention, that in exchange for the privilege of obtaining a license to engage in gaming activities, a licensee is obliged to forego limited political rights, is also untenable. In *Posadas de Puerto Associates v. Tourism Co. of Puerto Rico*, 478 U.S. 328, 106 S.Ct. 2968, 92 L.Ed. 2d 266 (1986), the Court stated that "the greater power to completely ban casino gambling necessarily

includes the lesser power to ban advertising of casino gambling." 478 U.S. at 345-46, 106 S.Ct. at 2979. This proposition, which supports the State's contention, was addressed again by the Court in *44 Liquormart, Inc. v. Rhode Island*, 517 U.S. 484, 116 S.Ct. 1495, 134 L.Ed. 2d 711 (1996). There the Court stated:

> As a matter of First Amendment doctrine, the *Posadas* syllogism is even less defensible. The text of the First Amendment makes clear that the Constitution presumes that attempts to regulate speech are more dangerous than attempts to regulate conduct. That presumption accords with the essential role that the free flow of information plays in a democratic society. As a result, the First Amendment directs that government may not suppress speech as easily as it may suppress conduct, and that speech restrictions cannot be treated as simply another means that the government may use to achieve its ends.
>
> * * * *
>
> Even though government is under no obligation to provide a person, or the public, a particular benefit, it does not follow that conferral of the benefit may be conditioned on the surrender of a constitutional right.

Id. at 510, 116 S.Ct. at 1512-1513 (footnotes omitted).

Acceptance of a video poker license does not require the relinquishment of First Amendment rights to speech and association. Similarly, the State's attempt to support this argument with the jurisprudence upholding federal and state limitations on employee political activity is unpersuasive. While it is true that the acceptance of government employment carries with it the relinquishment

of certain political rights, the jurisprudence recognizes a distinction in the manner in which the government can regulate its employees and private citizens. The United States Supreme Court has stated that "[government] may impose restraints on the job-related speech of public employees that would be plainly unconstitutional if applied to the public at large." *U.S. v. National Treasury Employees Union*, 513 U.S. 454, 464, 115 S.Ct. 1003, 1012, 130 L.Ed. 2d 964 (1995). No such distinction is recognized for private citizens receiving a particular benefit from the government. Accordingly, the State's argument must fail.

This absolute ban on political contributions by a particular segment of society goes far beyond what *Buckley* endorsed. The First Amendment simply does not allow the State to target groups and exclude them from the political process. I am convinced that the broad prophylactic measures in La. Rev. Stat. Ann. § 18:1505.2(L)(3)(a)(i); La. Rev. Stat. Ann. § 18:1505.2(L)(3)(b)(i), insofar as it is applied to La. Rev. Stat. Ann. § 18:1505.2(L)(3)(a)(i), and La. Admin. Code tit. 42, § 107, insofar as it precludes candidate and political committee contributions by video draw poker licensees, are unconstitutional under the First and Fourteenth Amendments of the United States Constitution.

SUPREME COURT OF LOUISIANA

NO. 99-CA-2337

CLAUDE M. PENN, JR., GLADNEY L. MANUEL, JR., FELICIANA VENTURES, INC., AND MANUEL'S I-10 AUTO & TRUCK STOP, INC.

v.

STATE OF LOUISIANA, THROUGH THE HONORABLE MURPHY J. FOSTER, JR., GOVERNOR, THE HONORABLE RICHARD P. IEYOUB, ATTORNEY GENERAL, THE SUPERVISORY COMMITTEE ON CAMPAIGN FINANCE DISCLOSURE AND THE DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONS, LOUISIANA GAMING CONTROL BOARD

/s/PFC CALOGERO, C.J., concurring.

The provisions at issue in this case,[1] La. R.S. 18:1505.2(L)(3)(a)(i), La. R.S. 18:1505.2(L)(3)(b)(i), and Rule 107 of Title 42 of the Louisiana Administrative Code ("the Louisiana statutes"), prohibit *some*, but *not all*, persons associated with the video draw poker industry, from making a contribution, loan, or transfer of funds to any candidate for state or local public office.[2] The prohibition

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[1] Other sections of La. R.S. 18:1505.2(L) also contain provisions which prohibit various persons associated with the gaming industry from contributing to candidates for elective office. Those other sections are not under attack in this lawsuit. Therefore, I express no opinion as to their validity.

[2] Section 1502.2(L)(3)(a)(i)'s prohibition applies to any person licensed under the Video Draw Poker Devices Control Law, La. R.S. 27:301, *et seq.*, as a distributor, manufacturer, or service entity of gaming devices. Further, when any truck stop, pari-mutuel or off-track wagering facility is licensed for video

applies whether the contribution, loan, or transfer of funds is given directly to the candidate, to any political committee of the candidate, or to any committee supporting or opposing a specific candidate. *See* La. R.S. 18:1502.2(L)(2). Further, the term "candidate" is broadly defined to include any person seeking nomination or election to public office, with the exception of several enumerated federal offices. *See* La. R.S. 18:1483(3)(a). In sum, those video draw poker licensees affected by the Louisiana statutes cannot contribute to any candidate in any state or local election.[3] *See id.*

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draw poker devices, its owners are included in the prohibition. *See* La. R.S. 18:1502.2(L)(3)(a)(i).

However, various other persons associated with the video draw poker industry are exempted from the prohibition. For instance, those who actually own the video draw poker devices are exempted, as well as owners of bars, lounges, hotels, motels, and restaurants licensed for video draw poker. The prohibitions established in section 1502.2(L)(3)(a)(i) are broadened by section 1502.2(L)(3)(b)(i), which makes the prohibition applicable to any person who has an "interest," directly or indirectly, in any legal entity prohibited from contributing under section 1502.2(L)(3)(a)(i). *See* La. R.S. 18:1502.2(L)(3)(b)(i). Persons with an "interest" in one of the affected legal entities include individuals, as well as their spouses, who have greater than a ten percent ownership interest in the entity. *See id.*

[3] As discussed in note 2, *supra*, not all members of the video draw poker industry are covered by the prohibition. Thus, in addition to their First Amendment challenge, Appellees also argue that the Louisiana statutes violate the equal protection clauses of the United States and Louisiana Constitutions. The district court, however, held the Louisiana statutes unconstitutional under the First and Fourteenth Amendments to the United States Constitution.

All parties to this suit agree that legislation, such as the Louisiana statutes, which sets limits on the amount of money that an individual can contribute to a candidate, operates in an area subject to First Amendment protection. The State, however, argues that the Louisiana statutes are constitutional, *i.e.*, not in violation of the First Amendment, because in *Buckley v. Valeo*, 424 U.S. 1, 96 S. Ct. 612 (1976) (per curiam), the United States Supreme Court upheld *limits* on contributions to candidates. According to the State, *Buckley* holds that "limiting the actuality and appearance of corruption is a sufficiently important governmental purpose to justify limitations on contributions." Thus, because the public associates gambling and gaming with corruption, say the defendants, the Louisiana statutes are a permissible infringement on First Amendment rights under *Buckley*.

After a review of the *Buckley* decision as well as the applicable campaign finance jurisprudence, I conclude that the prohibition on contributions in the Louisiana statutes exceeds the permissible infringement on First Amendment rights recognized by the Court in *Buckley*. Consequently, the Louisiana statutes are unconstitutional because they violate the First and Fourteenth Amendments of the United States Constitution.[4]

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[4] The First Amendment to the United States Constitution states in part that "Congress shall make no law . . . abridging the freedom of speech." U.S. Const. amend. I. The First Amendment applies to the States under the Due Process Clause of the Fourteenth Amendment. *44 Liquormart, Inc. v. Rhode Island*, 517 U.S. 484, 489, 116 S. Ct. 1495, 1501 n. 1 (1996).

In *Buckley*, the United States Supreme Court held that campaign contributions are a type of political expression entitled to First Amendment protection. *Buckley*, 424 U.S. at 14, 96 S. Ct. at 632. Nevertheless, the *Buckley* Court upheld federal legislation that set ceiling limits on the amount of money that any one individual could contribute to a specific candidate for certain federal offices. *Id.* at 29, 96 S. Ct. at 640. In upholding the contribution limits at issue in *Buckley*, the Court identified a single "compelling governmental interest" sufficient to outweigh the burden on First Amendment rights caused by contribution limits: curtailing the actual or perceived corruption of our electoral process that can result when an individual contributor gives a large sum of money to a specific candidate. *Id.* at 26-27, 96 S. Ct. at 638. The crux of the Court's reasoning in upholding the limits was the potentially coercive influence that *large* financial contributions can have on the candidate's actions if elected to office. The Court characterized this as "quid pro quo arrangements" and concluded that this specific type of corruption, *i.e.*, the "purchasing of a candidate" by way of a large contribution, was so potentially injurious to our "representative democracy" as to justify the contribution limits at issue. *Id.*[5]

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[5] For example, during the 1972 presidential campaign, over $3 million dollars in presidential campaign contributions were attributable to six large contributors who were actively seeking appointments to ambassadorships. *Buckley v. Valeo*, 519 F.2d 821, 840 n. 38 (D.C. Cir. 1975), *aff'd in part and rev'd in part*, 424 U.S. 1, 96 S. Ct. 612 (1976). Further, campaign fund-raisers routinely advised potential contributors that "only the President could guarantee nomination" to such a position. *Id.*

To date, the Court has not expanded the scope of the permissible infringement on First Amendment rights that it created in *Buckley* when it upheld the contribution limits at issue in that case. To the contrary, in the campaign finance cases that follow *Buckley*, the Court has made clear that *Buckley* was a very "narrow exception" justified only by the quid pro quo/large contribution type of corruption discussed above. *See Citizens Against Rent Control v. Berkeley*, 454 U.S. 290, 296, 102 S. Ct. 434, 437 (1981) ("*Buckley* identified a single narrow exception to the rule that limits on political activity were contrary to the First Amendment."); *Colorado Republican Campaign Comm. v. Federal Election Comm'n*, 518 U.S. 604, 640, 116 S. Ct. 2309, 2328 (1996) (Thomas, J., concurring in judgment and dissenting in part) (stating that *Buckley*'s analysis was "deeply flawed" and campaign contributions should receive full First Amendment protection); *California Med. Ass'n v. Federal Election Comm'n*, 453 U.S. 182, 202, 101 S. Ct. 2712, 2725 (1981) (Blackmun, J., concurring in part and concurring in the judgment) ("[It is] a mistaken view that contributions are 'not the sort of political advocacy . . . entitled to full First Amendment protection.' "). In sum, campaign contribution limits aimed at defeating corruption, as the Louisiana statutes purport to do, must fit within the exception created by *Buckley* in order to pass constitutional muster. The exception created by *Buckley* permits the State to set reasonable *limits*, applicable to *all* persons, on campaign contributions, for the *sole* purpose of reducing the corruption that may result when contributors give large financial contributions in exchange for political favors, *i.e.*, political quid

pro quo arrangements. Otherwise, according to *Buckley* and its progeny, campaign contributions are a type of political expression protected by the First Amendment.

Turning now to the Louisiana statutes at issue in this case, it is clear that they do not fit within the "narrow exception" recognized in *Buckley*. First of all, the Louisiana statutes impose a complete *prohibition* on contributions which prevents the affected parties from giving any financial support directly to a candidate. *Buckley*, on the other hand, upheld setting reasonable *limits* on contributions in order to prevent any one individual from giving too large a contribution. Although the permissibility of a *prohibition*, rather than a *limit*, was not before the *Buckley* Court, the reasoning employed by the Court in upholding contribution limits makes clear that a complete prohibition cannot be acceptable. Specifically, the Court reasoned that it was the symbolic act of contributing to a candidate that constituted political expression, and that the expression encompassed in the act of contributing was unrelated to the size of the contribution. *Buckley*, 424 U.S. at 21, 96 S. Ct. at 635-36. Thus, because the size was not as important as the act of contributing itself, a legislatively imposed limit on size was merely a "marginal restriction" on First Amendment rights that was outweighed by the government's interest in preventing political quid pro quo corruption. *See id.* at 20, 96 S. Ct. at 635.

A prohibition on contributions, however, does not mesh with this reasoning because the contributor can no longer engage in the symbolic act of making a financial contribution. Unlike a limit which only restricts the size of the contribution but leaves the act of contributing unaffected, a prohibition cuts off all expression associated

with making a contribution to a candidate. Therefore, a complete prohibition cannot be characterized as a "marginal restriction" under the *Buckley* Court's reasoning.[6]

Second, the Louisiana statutes were not enacted to serve the *sole* "compelling interest" recognized in *Buckley*: preventing corruption of the electoral process by political quid pro quo arrangements with large contributors. Rather, the Louisiana statutes were enacted to prevent a group, which the public historically has associated with corruption, from exerting influence in any state or local election by way of a contribution to a candidate.[7] The

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[6] As the State points out in its brief to this Court, legislation imposing prohibitions on political activity by government employees has been upheld. *See, e.g., United States Civil Serv. Comm'n v. National Ass'n of Letter Carriers*, 413 U.S. 548, 93 S. Ct. 2880 (1973); *Ricks v. Department of State Civ. Serv.*, 8 So. 2d 49, 59 (La. 1942). However, the government's ability to impose nondiscriminatory restrictions on the political activities of its own employees differs significantly from its ability to impose like restrictions on private citizens. *Letter Carriers*, 413 U.S. at 564, 93 S. Ct. at 2890 (citing *Pickering v. Board of Educ.*, 391 U.S. 563, 568 (1968)).

[7] Part (L) of La. R.S. 18:1505.2 addresses campaign finance regulation specific to the gaming industry. The section begins with the following statement of legislative purpose:

> The legislature recognizes that it is essential to the operation of effective democratic government in this state that citizens have confidence in the electoral process and that elections be conducted so as to prevent influence and the appearance of influence of candidates for public office and of the election process by special interests, *particularly by those persons substantially interested in the gaming industry in this state.*

La. R.S. 18:1505.2(L)(1) (emphasis added).

State asserts that the public perceives that the electoral process is corrupted when groups that it associates with corruption contribute to candidates running for elected positions.

Once again, without conceding the validity of this reasoning, the effect on the electoral process caused by one group that the public perceives as "corrupt" is not the type of corruption that *Buckley* recognized as a governmental interest sufficient to justify contribution limits. Nothing in *Buckley*, or any of the cases that followed, suggests that the State can target unpopular groups in order to suppress their political expression. Again, *Buckley* defined "corruption" very narrowly to be political quid pro quo arrangements which might arise from large contributions, and nothing more. Nothing in the later cases suggests a broader meaning. In short, it is not enough to say that *Buckley* allows the State to set limits in order to prevent corruption, unless one clarifies that the corruption at issue is from quid pro quo arrangements resulting from large contributions. That is simply not what the Louisiana statutes purport to do.

Moreover, the Louisiana statutes cannot, as a practical matter, serve the "compelling interest" of preventing corruption from large contributions because Louisiana already has in place general campaign finance laws that limit the amount of money that any video draw poker licensee, or any other person for that matter, can contribute to a candidate. *See* La. R.S. 18:1505.2(H).[8] Because of

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[8] For instance, individuals wishing to contribute to candidates for the State House or Senate, are limited to a $2,500

the limits set in La. R.S. 18:1505.2(H), the large contributions which were *key* to the *Buckley* decision are not present in this case. Video draw poker licensees covered by the prohibitions at issue here, as well as other members of the gaming industry, can contribute no more to a candidate than any other citizen. Thus, the State's interest in preventing the *single* type of political corruption that *Buckley* identified as an interest sufficient to outweigh First Amendment rights, *i.e.*, political quid pro quo arrangements resulting from large contributions, is not present in this case.

The State asserts, however, that the large revenues collected as a whole by the gaming industry would allow its members to disproportionately affect the political process if they are allowed to contribute to candidates. However, while *Buckley* permits the State to alleviate undue influence on candidates by virtue of individual large contributions, it does not allow the State to set limits, or, even more so, prohibitions, in order to prevent the influence that any one group could potentially assert by collectively contributing to a candidate. *See First Nat'l Bank v. Bellotti*, 435 U.S. 765, 790, 98 S. Ct. 1407, 1423 (1978) ("[T]he fact that advocacy may persuade the electorate is hardly a reason to suppress it."); *Buckley*, 424 U.S. at 48-49, 96 S. Ct. at 649. In short, while the First Amendment does not protect the contributor's right to give a

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dollar contribution. La. R.S. 18:1505.2(H)(1)(a)(ii); La. R.S. 18:1483(7). On the other hand, individuals who contribute to candidates for "major" elective offices, such as governor or attorney general, can give no more than $5,000 dollars. La. R.S. 18:1505.2(H)(1)(a)(i); La. R.S. 18:1483(11).

candidate a contribution of unlimited size, it does protect the right of the individual to contribute to the candidate of his choice without regard to whether he is one of many persons whose interests are the same as his own.

Another difference between the Louisiana statutes and the ones upheld in *Buckley* is that the *Buckley* statutes were applicable to the entire citizenry. That is, all potential campaign contributors were subject to the limits upheld in *Buckley*, and no one group or industry was singled out.[9]

The Louisiana statutes at issue in this case, on the other hand, do not apply to all potential contributors to candidates for elective office. Rather, they target a specific group of allegedly unpopular individuals among our citizenry. The undisputed purpose of the Louisiana statutes is to suppress the potential political influence specific to that one group. *See* La. R.S. 18:1505.2(L)(1). However, the idea that the government can identify unpopular groups and pass legislation aimed at suppressing their political influence is one foreign to the First Amendment of our Constitution. 44 *Liquormart*, 517 U.S. at 501, 116 S. Ct. at 1507 (recognizing the dangers associated with governmental attempts to single out certain

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[9] As previously stated, the contribution limits upheld in *Buckley* applied "broadly to all phases of and all participants in the electoral process." *Buckley*, 424 U.S. at 12-13, 96 S. Ct. at 631. No one group or industry was targeted, notwithstanding that Congress enacted the statutes at issue in response to egregious examples of quid pro quo abuse committed by specific industries during the 1972 election campaigns. *See Buckley*, 519 F.2d at 839-40 nn.36-38 (citing examples from the dairy, dental, oil, and airline industries).

messages for suppression); *see Police Dep't of Chicago v. Mosley*, 408 U.S. 92, 95-96, 92 S. Ct. 2286, 2290 (1972) ("[A]bove all, the First Amendment means that government has no power to restrict expression because of its message, its ideas, its subject matter, or its content. . . . "). Therefore, because the Louisiana statutes single out one group for different treatment under the First Amendment, they are fundamentally different in nature from those upheld by the *Buckley* Court.

However, the State, as well as the dissenting justices of this Court, argue that the gaming industry is *unique* because of its long history of opprobrium in this State, and the public's long-held perception that gambling is associated with corruption. They also cite two state court cases, *Petition of Soto v. State*, 565 A.2d 1088 (N.J. Super. Ct. App. Div.1989), and *Schiller Park Colonial Inn, Inc. v. Berz*, 349 N.E.2d 61 (Ill. 1976), because those cases relied on *Buckley* to uphold *prohibitions* on members of so-called "vice" industries that those courts recognized as *unique*.[10]

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[10] In *Soto*, a New Jersey appellate court upheld an employee regulation which prohibited any casino officer or key employee from contributing to candidates for public office. Plaintiff alleged that the regulation impermissibly infringed on her First Amendment rights of free speech and association. The *Soto* court, however, found that "crime and corruption are inherent in the casino industry and that casino gambling is unique." *Soto*, 565 A.2d at 1104. Further, a state report to the legislature had concluded that "contributions by casino licensees . . . give the appearance of attempting to 'buy' political influence and favoritism and in fact have the very real potential for causing such favoritism to occur." *Id.* at 1096. The court concluded that this fear of corruption was the same fear of corruption of the political process relied upon by the *Buckley* Court. *Id.* at 1097.

After a careful review of the *Soto* and *Schiller Park* cases, I find them unpersuasive for two reasons. First, even though both cases relied on *Buckley* to uphold *prohibitions* on contributions instead of *limits*, neither court adequately explained how a prohibition could be acceptable under *Buckley*'s reasoning. For example, when the *Schiller Park* court addressed the permissibility of a complete prohibition, it simply quoted the portion of the *Buckley* opinion that addressed why a *limitation* was a "marginal restriction." *Schiller Park*, 349 N.E.2d at 66 (quoting *Buckley*, 424 U.S. at 20-21, 96 S. Ct. at 635). It then concluded that a prohibition was acceptable because the Illinois legislature could have reasonably believed that a limitation would not have been as effective as a complete prohibition. *Id.* Therefore, while the *Schiller Park* court faced issues very similar to the ones raised in this case, the reasoning employed by that court in upholding the prohibitions at issue is not very helpful.[11]

Schiller Park dealt with prohibitions imposed on liquor licensees. The court began its analysis by noting that "the nature of the liquor industry [was] a prime consideration in judging the validity of [the statute at issue]." *Schiller Park*, 349 N.E.2d at 65. Further, "the business of selling intoxicating liquor is 'attended with danger to the community' and is 'closely related to certain evils in society.' " *Id.* Like the *Soto* court, the court in *Schiller Park* concluded that these societal concerns were state interests sufficient to uphold the prohibitions in that case. *Id.* at 66.

[11] It is also important to note that *Schiller Park* was decided only four months after the Supreme Court handed down *Buckley*. Thus, the *Schiller Park* court could easily have interpreted *Buckley* as a bellwether for the Court's willingness to allow the government increasing regulatory authority in the area of campaign contribution limits. To the contrary, the Court

As for the *Soto* case, that court relied on *Schiller Park*'s questionable application of *Buckley* to uphold the prohibitions in that case. *Soto* quoted extensively from *Schiller Park* before following *Schiller Park*'s example and giving deference to its own legislature's determination that a prohibition was a necessary measure. *Soto*, 565 A.2d at 1098-99. Simply said, neither *Soto* nor *Schiller Park* is very useful in explaining one of the key differences between the *Buckley* statutes and the Louisiana statutes, *i.e.*, the permissibility of a complete prohibition on contributions as opposed to a limitation. While cases from other courts are useful in determining similar issues faced by this Court, those cases are only persuasive to the extent that they are backed by solid reasoning consistent with binding constitutional authority such as the United States Supreme Court's decision in *Buckley*.

Second, and most significantly, the United States Supreme Court's recent decision in *44 Liquormart* casts more doubt on the reasoning employed by the *Soto* and *Schiller Park* courts. Both of the latter courts looked to the nature of the industries involved when concluding that the government's asserted interest was sufficient to outweigh the infringement on First Amendment rights caused by the prohibitions at issue in those cases. *See Schiller Park*, 349 N.E.2d at 65 (stating that the business of selling liquor was "related to certain evils in society"); *Soto*, 565 A.2d at 1104 (stating that crime and corruption are inherent in the casino industry). However, in *44*

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made clear in subsequent cases that *Buckley* created a "narrow exception." *Citizens Against Rent Control*, 454 U.S. at 296, 102 S. Ct. at 437.

Liquormart, the Court unequivocally rejected the proposition that certain products, activities, or industries are entitled to less protection under the First Amendment because of their history as "vice" activities. *See 44 Liquormart*, 517 U.S. at 513-14, 116 U.S. at 1513 (rejecting the state's argument that commercial speech protected under the First Amendment is subject to a "vice" exception). The Court recognized the danger inherent in giving legislatures the discretion to categorize certain activities as "vices" for the purpose of suppressing expression. *Id.* ("Almost any product that poses some threat to public health or public morals might reasonably be characterized by a state legislature as relating to 'vice activity.' ").

Furthermore, the Court's refusal in *44 Liquormart* to create a "vice" exception to the First Amendment is especially significant because the restriction at issue in that case operated in the area of commercial speech, an area entitled to *less* protection under the First Amendment than other forms of speech. Surely, if the Court would not recognize a "vice" exception in the lesser protected area of commercial speech, then a "vice" exception *cannot* be acceptable for campaign contribution regulations which the Court has held "operate in an area of the most fundamental First Amendment activities." *Buckley*, 424 U.S. at 14, 96 S. Ct. at 632. Simply said, in the wake of *44 Liquormart*, the arguments of the State and dissenting justices of this Court, which cite gambling's history of perceived corruption as justification for the Louisiana statutes, are questionable.

However, my dissenting colleagues make an argument under our State Constitution which at first glance seems, potentially at least, to aid the defendants. They

point out that, under the Louisiana Constitution, the legislature is charged with defining and suppressing gambling, and that the prohibition on campaign contributions in the Louisiana statutes is merely one of the means employed by our legislature while acting pursuant to its constitutional duty to suppress gambling. One of the dissents also cites various cases from this Court which have recognized the legislature's broad powers in the area of gambling regulation. *See, e.g., Polk v. Edwards*, 626 So. 2d 1128 (La. 1993); *Theriot v. Terrebonne Parish Police Jury*, 435 So. 2d 515 (La. 1983); *State v. Mustachia*, 152 La. 821, 94 So. 408 (1922); *Ruston v. Perkins*, 114 La. 851, 38 So. 583 (1905).

Of course, the State Constitution, as did the jurisprudence under the 1921 State Constitution, gives the legislature the responsibility to suppress gambling. La. Const. art. 12, § 6(B). The *Polk* case followed *Gandolfo v. Louisiana State Racing Commission*, 227 La. 45, 78 So. 2d 504 (1954), and the constitutional effort in 1974, to leave unchanged this Court's jurisprudence in that area. In fact, the 1974 Constitution made it even more clear that the legislature had the power to define, and as so defined, to suppress gambling. However, even if we assume that the legislature has chosen these Louisiana statutes as a means of suppressing gambling, it does not necessarily follow that the statutes under attack in this litigation are valid. The legislature, having chosen to ban political contributions by some members of the gaming industry, cannot run afoul of the United States Constitution. That is, no provision of our State Constitution can authorize the legislature to violate the First Amendment, which as part of the United States Constitution, is the supreme law of the

land. U.S. Const. art. VI, § 2. Thus, the fact that our State Constitution directs the legislature to suppress gambling means nothing to the validity of the Louisiana statutes if the means chosen by the legislature violate the First Amendment. *See Citizens Against Rent Control*, 454 U.S. at 295, 102 S. Ct. at 437 ("It is irrelevant that the voters rather than a legislative body enacted [the statute], because the voters may no more violate the Constitution by enacting a ballot measure than a legislative body may do so by enacting legislation.").

Furthermore, because the Louisiana statutes apply only to a targeted group of individuals, the State's argument that *Buckley* dictates that the Louisiana statutes should be subject to a more deferential standard of review than strict scrutiny is unpersuasive. As the State pointed out in its brief to this Court, the *Buckley* Court stated that the government could justify "even a significant interference" with protected First Amendment rights, by demonstrating a "sufficiently important interest," and by employing means "closely drawn" to avoid unnecessary infringement on protected rights. *Buckley*, 424 U.S. at 25, 96 S. Ct. at 638. Nevertheless, the Court also stated that the provisions at issue in that case were subject to "the closest scrutiny." *Id.*, 96 S. Ct. at 637. Assuming *arguendo* that the *Buckley* Court did not apply strict scrutiny,[12] it does not follow that every type of

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[12] As one commentator has stated, the level of scrutiny employed by the *Buckley* Court is difficult to ascertain due to the Court's inconsistent phraseology. James Bopp, Jr., *Constitutional Limits on Campaign Contribution Limits*, 11 Regent U.L. Rev. 235, 240 (1999). Later in the per curiam opinion, after using the language discussed above, the Court characterized its analysis

contribution regulation is entitled to something less than strict scrutiny. *See 44 Liquormart*, 517 U.S. at 501, 116 S. Ct. at 1507 (recognizing that restrictions of similar categories of expression are not necessarily subject to a similar form of review). As discussed above, the Louisiana *prohibitions* differ significantly from the *Buckley limits* in ways which make them more burdensome on protected First Amendment rights. Given, however, that video draw poker is a legal business activity in our state, and that much of the gaming industry, and some facets of the video draw poker industry, are exempted from the prohibitions at issue, it is unlikely that the State could carry its burden even under a standard of review less rigorous than strict scrutiny. *See Greater New Orleans Broadcasting Ass'n, Inc. v. United States*, ___ U.S. ___, 119 S. Ct. 1923 (1999).[13] Thus, it

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as "the rigorous standard of review established by [its] prior decisions." *Buckley*, 424 U.S. at 29, 96 S. Ct. at 640.

Other courts have, however, interpreted the *Buckley* decision as requiring strict scrutiny analysis. *See, e.g., Carver v. Nixon*, 72 F.3d 633, 637 (8th Cir. 1995), *cert. denied*, 518 U.S. 1033 (1996).

[13] In *Greater New Orleans Broadcasting Ass'n, Inc. v. United States*, 119 S. Ct. 1923, 1926 (1999), the Court addressed the validity of federal statutes that prohibited, *some but not all*, broadcast advertising of lotteries and casino gambling. Because the statutes affected commercial speech, the Court did not apply strict scrutiny, but instead used the four-part *Central Hudson* test which does not require the State to demonstrate a compelling state interest. *See id.* at 1930. Instead, the State must show that: (1) the speech concerns a lawful activity and is not misleading, (2) the asserted governmental interest is substantial, (3) the regulation directly advances the governmental interest asserted, and (4) the regulation is not more extensive than necessary to serve that interest. *Greater New Orleans Broadcasting*, 119 S. Ct. at

is unnecessary to grapple with the matter of the level of scrutiny appropriate to this case.

In sum, the State may set reasonable *limits*, applicable to *all* persons, on campaign contributions, for the *sole* purpose of reducing the corruption that results when contributors give large financial contributions in exchange for political favors, *i.e.*, political quid pro quo. Otherwise, according to *Buckley*, campaign contributions are a type of political expression protected by the First Amendment. Because the Louisiana statutes at issue in this case impose a complete prohibition, against targeted individuals, for a purpose other than alleviating corruption from large contributions, they go beyond what *Buckley* upheld. Therefore, I conclude that the Louisiana statutes impermissibly burden the First Amendment rights of those affected by the statutes, and are therefore unconstitutional.

1930 (quoting *Central Hudson Gas & Elec. Corp. v. Public Serv. Comm'n*, 447 U.S. 557, 566 (1980)).

The government argued that the federal statutes were necessary to reduce the societal ills associated with gambling. However, the Court held that the government could not meet it [sic] burden under parts (2) and (3) of the *Central Hudson* test because the statutes at issue were "so pierced by exemptions and inconsistencies" that the government could not meet its burden. *Id.* at 1933. Further, because Congress had, in other legislation, sanctioned and approved of gambling, the federal policy disfavoring gambling had become equivocal. *Id.* at 1932.

SUPREME COURT OF LOUISIANA

No. 99-CA-2337

CLAUDE M. PENN, JR., GLADNEY L. MANUEL, JR., FELICIANA VENTURES, INC., AND MANUEL'S I-10 AUTO & TRUCK STOP, INC.

Versus

STATE OF LOUISIANA, THROUGH THE HONORABLE MURPHY J. FOSTER, JR., GOVERNOR, THE HONORABLE RICHARD P. IEYOUB, ATTORNEY GENERAL, THE SUPERVISORY COMMITTEE ON CAMPAIGN FINANCE DISCLOSURE AND THE DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONS, LOUISIANA GAMING CONTROL BOARD

ON APPEAL FROM THE NINETEENTH JUDICIAL DISTRICT COURT PARISH OF EAST BATON ROUGE HONORABLE JEWEL E. WELCH, JUDGE

/s/HTL LEMMON, J., Concurring

The State of Louisiana, in completely denying the rights of some members of the gambling industry to contribute to political candidates and committees, claims a compelling interest in preventing actual corruption or the appearance of corruption caused by the influence of large contributions by individuals with gambling interests to a candidate's election. This argument fails for a number of reasons.

First, the State cannot legalize several forms of gambling in one fell swoop[1] and then shortly thereafter limit the First Amendment rights of some persons in the gambling industry by claiming that the now legal, licensed and highly regulated industry is corrupt. More significantly, because the persons in the gambling industry who are now totally banned from making campaign contributions were already limited by a valid statute (under *Buckley v. Valeo*, 424 U.S. 1 (1976)) from contributing more than $1000, $2500 or $5000 to candidates, there was no true danger that individual contributions of large sums of money to a candidate, for the quid pro quo arrangements feared in *Buckley v. Valeo*, will result in corruption of the electoral process. Finally, and perhaps most importantly, *Buckley v. Valeo* established only a "single narrow exception" to keeping debate on public issues "uninhibited, robust, and wide-open." The statutes and rules at issue do not come close to fitting within that narrow exception.

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[1] The validity of the 1992 statutes legalizing several forms of gambling is not before the court in the present case. I did not get to vote on the issue in *Polk v. Edwards*, 626 So. 2d 1128 (La. 1983), because of our temporarily having eight persons on a seven-justice court.

SUPREME COURT OF LOUISIANA

No. 99-CA-2337

CLAUDE M. PENN, JR., GLADNEY L. MANUEL, JR., FELICIANA VENTURES, INC., AND MANUEL'S I-10 AUTO & TRUCK STOP, INC.

v.

STATE OF LOUISIANA, THROUGH THE HONORABLE MURPHY J. FOSTER, JR., GOVERNOR, THE HONORABLE RICHARD P. IEYOUB, ATTORNEY GENERAL, THE SUPERVISORY COMMITTEE ON CAMPAIGN FINANCE DISCLOSURE AND THE DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONS, LOUISIANA GAMING CONTROL BOARD

ON APPEAL
FROM THE NINETEENTH JUDICIAL DISTRICT COURT,
PARISH OF EAST BATON ROUGE,
HONORABLE JEWEL E. WELCH, JUDGE

/s/CDK KIMBALL, Justice, concurring

I concur in the judgment that the challenged provisions are unconstitutional. The laws[1] at issue, which prohibit certain persons from contributing to any political candidate, any political committee of any such candidate, or to any other political committee which supports or opposes any candidate, function in an area of the most fundamental First Amendment activities. *Buckley v. Valeo,*

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[1] This term is loosely used to encompass those portions of La. R.S. 18:1505.2 declared unconstitutional by the trial court as well as Rule 107 of Title 42 of the Louisiana Administrative Code, which was also declared unconstitutional by the trial court.

424 U.S. 1, 14, 96 S.Ct. 612, 632 (1976) (per curiam). "The First Amendment affords the broadest protection to such political expression in order to assure the unfettered interchange of ideas for the bringing about of political and social changes desired by the people." *Id.* (quoting *Roth v. United States*, 354 U.S. 476, 484, 77 S.Ct. 1304, 1308 (1957)). A primary purpose of this Amendment is to protect unfettered discussions of government affairs, including those relating to candidates for political office. *Id.* This purpose reflects "our profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open." *Id.* (quoting *New York Times v. Sullivan*, 376 U.S. 254, 270, 84 S.Ct. 710, 721 (1964)). The "fullest and most urgent" application of the constitutional guarantee embodied in the First Amendment is to political campaigns. *Id.* at 15, 96 S.Ct. at 632 (quoting *Monitor Patriot Co. v. Roy*, 401 U.S. 265, 272, 91 S.Ct. 621, 625 (1971)).

In additional [sic] to this protection of political expression, the First Amendment also protects political association. *Id.* Protection of the right of association is afforded by the Constitution because effective advocacy, particularly of controversial points of view, is enhanced by group association. *Id.* at 15, 96 S.Ct. at 633. Thus, the right to associate with others for the common advancement of political beliefs and ideas is protected by the First Amendment. *Id.*

In light of the broad protection afforded political expression and association by the First Amendment, which the *Buckley* Court recognized was offended by the even-handed imposition of mere limitations on campaign

contributions, I cannot conclude that the absolute prohibitions on the exercise of protected rights by a targeted number of persons pass constitutional muster. I reach this conclusion for a number of reasons.

First, in upholding federal legislation that imposed a ceiling on the amount any one person or group could contribute to a candidate or political committee, the *Buckley* Court identified a "single narrow exception" to the rule that limits on political activity are contrary to the freedoms guaranteed by the First Amendment. *Citizens Against Rent Control/Coalition for Fair Housing v. City of Berkeley*, 454 U.S. 290, 296-297, 102 S.Ct. 434, 437 (1981). There, the Court reasoned that although contribution limitations impinge upon First Amendment freedoms, such limitations only marginally restrict the contributor's ability to engage in protected communication. *Buckley*, 424 U.S. at 20, 96 S.Ct. at 635. The Court's characterization of the contribution as a "marginal restriction" stemmed from its recognition that a limitation on the amount of money a person may give to a candidate or campaign organization involves "little direct restraint" on his political communication because it permits the "symbolic expression of support evidenced by a contribution" and still allows the contributor to discuss candidates and issues. *Id.* at 21, 96 S.Ct. at 636. Additionally, the Court found that "[m]aking a contribution, like joining a political party, serves to affiliate a person with a candidate." *Id.* at 22, 96 S.Ct. at 636. Furthermore, contributions enable "like-minded persons to pool their resources in furtherance of common political goals." *Id.* For these reasons, the Court recognized that the Act's contribution ceilings limit one "important" means of associating with

a candidate or committee, although they do allow contributors to become a member of any political association and to personally assist in the association's efforts on behalf of candidates. *Id.* The Court concluded that the "limited effect[s]" the contribution ceilings had upon First Amendment freedoms were justified by the government's interest in preventing actual corruption or the appearance of corruption that large individual contributions can have on a candidate who is elected to office. *Id.* at 29, 96 S.Ct. at 640.[2]

The instant case, however, does not fall into the single narrow exception identified in *Buckley*. There, the

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[2] The Court concluded that when large contributions are given to current and potential holders of political office in the hopes of securing a political quid pro quo, "the integrity of our system of representative democracy is undermined." *Id.* at 26-27, 96 S.Ct. at 638. This type of corruption has also been characterized as "a subversion of the political process." *FEC v. Nat'l Conservative Political Action Comm.*, 470 U.S. 480, 105 S.Ct. 1459 (1985). This is because elected officials may act contrary to their obligations of office if faced with the prospect of personal financial gain or infusions of large sums of money into their campaigns. *Id.* "The hallmark of corruption is the financial quid pro quo: dollars for political favors." *Id.* Similarly, the government was also justifiably concerned with limiting the appearance of corruption so that confidence in our system of representative government is not eroded. *Buckley*, 424 U.S. at 27, 96 S.Ct. at 638-639. Subsequent to *Buckley*, the Court has stated that preserving the integrity of the electoral process and preventing corruption are interests of the "highest importance." *First Nat'l Bank of Boston v. Bellotti*, 435 U.S. 765, 789, 98 S.Ct. 1407, 1422 (1978).

Court recognized that marginal restrictions involving little direct restraint on protected First Amendment freedoms were imposed by the contribution *limits* at issue in that case because the limitations nevertheless allowed the symbolic expression of support a contribution evidences. In contrast, the laws at issue *absolutely prohibit* certain persons from contributing to any candidate, any political committee or [sic] any such candidate, or any other political committee which supports or opposes any candidate. This prohibition forbids certain specified persons from engaging in the symbolic expression of support the *Buckley* Court relied on in concluding that contribution limitations are not repugnant to our Constitution. The fact that the laws do not purport to restrict the freedom of the specified persons from engaging in other types of political expression or from associating in other ways does not serve to lessen the impingement the absolute prohibition produces on First Amendment freedoms. *See Kusper v. Pontikes*, 414 U.S. 51, 94 S.Ct. 303 (1973) (holding that an Illinois law prohibiting a person from voting in the primary election of a political party if he had voted in the primary of any other party within the preceding twenty-three months unconstitutionally infringed upon the right of free political association even though it did not deprive persons of all opportunities to associate with the political party of their choice because it "absolutely preclude[d]" them from voting in a chosen party's primary election).

The complete ban on campaign contributions imposed by the laws at issue amounts to a "difference in kind" rather than a "distinction in degree" when compared to the contribution limitations upheld in *Buckley*.

This is significant because *Buckley* instructs that courts should not invalidate such limitations on the basis that a $2,000 limit on contributions, for example, will not serve as well as a $1,000 limitation since these "distinctions in degree" are more properly drawn by the legislature than by the judiciary. *Buckley*, 424 U.S. at 30, 96 S.Ct. at 640 ("While the contribution limitation provisions might well have been structured to take account of the graduated expenditure limitations for congressional and Presidential campaigns, Congress' failure to engage in such fine tuning does not invalidate the legislation. . . . [I]f it is satisfied that some limit on contributions is necessary, a court has no scalpel to probe, whether, say, a $2,000 ceiling might not serve as well as $1,000. Such distinctions in degree become significant only when they can be said to amount to differences in kind.") (footnote omitted) (internal quotations omitted); *FEC v. Massachusetts Citizens for Life, Inc.*, 479 U.S. 238, 107 S.Ct. 616 (1986) (Rehnquist, C.J., concurring in part and dissenting in part). Such deference, however, is not accorded legislative determinations when they can be said to "differ in kind" from those approved in *Buckley*. As noted above, the laws challenged in this case absolutely prohibit certain persons from contributing to political campaigns while the law upheld in *Buckley* allowed those wishing to express their political views by contributing to a political candidate to do so, at least symbolically. It was the federal law's allowance of this symbolic expression that permitted the Court in *Buckley* to conclude that the challenged law imposed only a marginal restriction on protected First Amendment rights. Unlike the limitations

considered in *Buckley*, the prohibitions at issue completely silence political expression in the form of contributions by a small segment of our society who are licensed by the State to conduct gaming-related business. The fact that the laws at issue totally silence such expression cause it to be "different in kind" from the contribution ceilings approved in *Buckley*.[3] Thus, the deference

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[3] In *Buckley*, the Court cited two cases to illustrate the concept of "different in kind." In one of the cases, *Rosario v. Rockefeller*, 410 U.S. 752, 93 S.Ct. 1245 (1973), the Court addressed the constitutionality of a New York law that required a voter to enroll in the political party of his choice at least 30 days before the general election in November in order to vote in the next subsequent party primary. If a voter failed to meet this deadline, he could not vote in a party primary until after the following general election. In upholding the constitutionality of the challenged law, the Court held that New York did not prohibit petitioners from voting in the primary election or from associating with the political party of their choice; rather, it merely imposed a legitimate time limitation on their enrollment, which they voluntarily disregarded. The Court noted that a person could vote in a different party primary each year as long as he enrolled in a new party between the prior primary and the cutoff date. Thus, it concluded, the law did not "lock a voter into an unwanted pre-existing party affiliation from one primary to the next." Because the law was tied to a legitimate purpose and was "in no sense invidious or arbitrary," the Court upheld the challenged law.

In contrast, the Court in *Kusper v. Pontikes*, 414 U.S. 51, 94 S.Ct. 303 (1973), addressed the constitutionality of an Illinois law which prohibited a person from voting in the primary of a political party if he had voted in the primary of any other party within the preceding 23 months. Appellee had voted in a Republican primary in February, 1971 and wanted to vote in a Democratic primary in March, 1972, but was barred from doing so by the 23-month rule. In striking down the law, the Court first observed that the law "substantially restricts" an Illinois voter's

given to Congress' determination of the suitability of the particular limitations upheld in *Buckley* is not mandated in the instant case.

An additional reason the challenged laws are, in my view, unconstitutional deals with the fact that the State's ban against certain persons involved in the gaming industry from voicing their political ideas by way of campaign contributions, while allowing anti-gambling forces to fully voice their ideas, in part through campaign contributions, is contrary to the design of the First Amendment. "[T]he concept that government may restrict the speech of some elements of our society in order to enhance the relative voice of others is wholly foreign to the First Amendment. . . . " *First Nat'l Bank of Boston v. Bellotti*, 435 U.S. 765, 790-791, 98 S.Ct. 1407, 1423 (1978); *Buckley*, 424 U.S. at 48-49, 96 S.Ct. at 649. In

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freedom to change his political party affiliation. This is because one who wanted to change his party was forced to wait almost two years before his choice would be given effect. The effect of this law was to "lock" the voter into his pre-existing party affiliation for a substantial period of time following his participation in any primary election. The Court noted that although the law did not deprive voters of all opportunities to associate with the political party of his choice, it did absolutely preclude appellant from voting in the Democratic 1972 primary.

In what was later characterized as constituting a case "different in kind" from *Rosario*, the Court found that unlike the situation presented in *Rosario*, there was no action appellant could have taken to make herself eligible to vote in the 1972 Democratic primary. This law therefore significantly infringed upon appellant's right of free political association and did not employ the least drastic means to further the state's legitimate interest. Accordingly, the law was declared unconstitutional by the Court.

supporting its prohibition, the State points out that, for the fiscal year ending June 30, 1998, truck stops with video poker devices received over $205,000,000 in net device revenues. It then argues that revenues of this magnitude would, in the absence of the challenged prohibitions, allow the gaming industry to disproportionately affect the political process if they are allowed to contribute to candidates and committees supporting or opposing candidates. *Buckley* makes it clear, however, that "contributors cannot be protected from the possibility that others will make larger contributions." *Citizens Against Rent Control*, 454 U.S. at 295, 102 S.Ct. at 437. Therefore, that certain persons with substantial ties to the gaming industry may, in fact, personally possess greater wealth or control a larger bank account than the average citizen cannot justify the instant infringement on protected First Amendment rights. This is especially true in light of the fact that persons with substantial ties to the gaming industry, as well as all other persons, are subject to Louisiana's general contribution limits similar to the ones upheld in *Buckley*. *See* La. R.S. 18:1505.2(H).

In a related vein, the fact that gambling may be characterized as a "vice" does not serve to lessen the First Amendment rights of those involved in its operation. As the Court stated in *44 Liquormart, Inc. v. Rhode Island*, 517 U.S. 484, 116 S.Ct. 1495 (1996):

> Moreover, the scope of any "vice" exception to the protection afforded by the First Amendment would be difficult, if not impossible, to define. Almost any product that poses some threat to public health or public morals might reasonably be characterized by a state legislature as relating

> to "vice activity." Such characterization, however, is anomalous when applied to products such as alcoholic beverages, lottery tickets, or playing cards, that may be lawfully purchased on the open market. The recognition of such an exception would also have the unfortunate consequence of either allowing state legislatures to justify censorship by the simple expedient of placing the "vice" label on selected lawful activities, or requiring the federal courts to establish a federal common law of vice. For these reasons, a "vice" label that is unaccompanied by a corresponding prohibition against the commercial behavior at issue fails to provide a principled justification for the regulation of commercial speech about that activity.

Id. at 514, 116 S.Ct. at 1513-14 (internal quotations omitted).[4] In other words, the State cannot justify an infringement on protected First Amendment rights by alleging

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[4] Although *44 Liquormart* is a commercial speech case which deals with a ban on the advertisement of the retail price of alcoholic beverages and, as such, is not directly controlling in a political speech case such as the one before us, I find its rejection of a "vice" exception to First Amendment protections instructive in the instant situation. This is particularly true in light of the fact that basic First Amendment principles, such as the fact that government may not suppress speech as easily as it may suppress conduct, clearly apply to commercial speech, *44 Liquormart*, 517 U.S. at 512, 116 S.Ct. at 1512, that a "less than strict standard" is generally applied in commercial speech cases, *Id.* at 507, 116 S.Ct. at 1510, and that the State may regulate some types of commercial advertising more freely than other types of protected speech. *Id.* at 498, 116 S.Ct. at 1505. Because the "vice" exception is not allowed in the commercial speech arena, which utilizes a less than rigorous standard of review, I believe such an exception would similarly be disallowed in a case where protected political speech is severely

that the protected rights relate to a "vice" activity when the State itself allows the so-called "vice" to legally exist. Such a result would be contradictory to the decision of this State, and, indeed, that of almost every state in the nation, to confer legal status upon certain gaming activities. *See Greater New Orleans Broadcasting Ass'n., Inc. v. United States*, 527 U.S. ___, 119 S.Ct. 1923 (1999) (noting that some form of gambling is legal in nearly every State and that "in the judgment of both the Congress and many state legislatures, the social costs that support the suppression of gambling are offset, and sometimes outweighed, by countervailing policy considerations, primarily in the form of economic benefits"). Once a state confers the benefit of legalization upon the gaming industry, it cannot require that industry to surrender its First Amendment rights. *44 Liquormart*, 517 U.S. at 513, 116 S.Ct. at 1513 ("Even though government is under no obligation to provide a person, or the public, a particular benefit, it does not follow that conferral of the benefit may be conditioned on the surrender of a constitutional right.").

Finally, even if I were to accept the correctness of the State's argument that the laws at issue are necessary to combat the perception of corruption associated with gambling interests and to foster confidence in the electoral process, a point I do not necessarily concede, I would be constrained to conclude the laws at issue are overbroad

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restricted, which must generally withstand more rigorous scrutiny.

in their scope. The challenged provisions absolutely prohibit specified persons connected with the gaming industry from contributing to *any candidate, any political committee of any candidate,* or *any other political committee which supports or opposes any candidate.* Thus, for example, the owner of a truck stop is prohibited from contributing any amount of money to his local school board candidate or to a candidate seeking to become coroner. I fail to see how such offices could favorably affect gaming interests such that there exists the possibility for a political quid pro quo. Consequently, the laws, as presently written, seem overbroad.[5]

For all the above reasons, I conclude the challenged laws are unconstitutional. To uphold these laws, which single out a group of persons who operate legal businesses in our State because their political expressions are assumed by some to be harmful, is to begin a descent down a slippery slope. We know not where that slope ends. At any time, our own protected views may be deemed harmful or may become unpopular and we may find ourselves wishing we never started down that path.

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[5] These concerns regarding the scope of the laws at issue, combined with the fact that the challenged provisions prohibit only a small segment of persons from expressing their political views through campaign contributions, also raise complex equal protection issues. I leave the resolution of these difficult issues for another day, however, because the conclusion that the laws at issue impermissibly infringe upon protected First Amendment rights is sufficient grounds upon which to invalidate the challenged provisions.

SUPREME COURT OF LOUISIANA

NO. 99-CA-2337

CLAUDE M. PENN, JR., GLADNEY L. MANUEL, JR., FELICIANA VENTURES, INC., AND MANUEL'S I-10 AUTO & TRUCK STOP, INC.

VERSUS

STATE OF LOUISIANA, THROUGH THE HONORABLE MURPHY J. FOSTER, JR., GOVERNOR, THE HONORABLE RICHARD P. IEYOUB, ATTORNEY GENERAL, THE SUPERVISORY COMMITTEE ON CAMPAIGN FINANCE DISCLOSURE AND THE DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONS, LOUISIANA GAMING CONTROL BOARD

ON APPEAL FROM THE NINETEENTH JUDICIAL DISTRICT COURT, FOR THE PARISH OF EAST BATON ROUGE, HONORABLE JEWEL E. WELCH, JUDGE

/s/JPV by PFC VICTORY, Justice, dissenting.

I would declare our Louisiana statute constitutional, thus providing the citizens of Louisiana the same measure of protection from corruption and the appearance of corruption involving gambling interests and our public officials that has existed for the citizens of New Jersey, one of our nation's largest gambling states, for almost a quarter of a century. Therefore, I respectfully dissent.

For over one hundred years, the Louisiana Constitution has mandated that the Louisiana Legislature suppress gambling. Although I sometimes wonder what form of gambling the Legislature now suppresses, the statute at issue in this case is a serious first attempt by the Legislature to separate elected public officials from an

industry that has been and is fraught with corruption. The history of corruption and the appearance of corruption in the gambling industry itself and with respect to public officials has been well documented for over a century and continues to this day.

Today, a narrow majority of this Court declares the Legislature's attempt unconstitutional, citing primarily the United States Supreme Court case of *Buckley v. Valeo*, 424 U.S. 1, 96 S.Ct. 612 (1976), decided in 1976. This is certainly a startling result since the *Buckley* case, which struck down expenditure limits for candidates, *specifically approved limits on campaign contributions* enacted by Congress. Further, the *Buckley* case did not even involve the gambling industry, nor did it discuss or invalidate complete prohibitions on campaign contributions, as does the majority today.

Since the *Buckley* case was decided in 1976, only two cases in the United States have reached the appellate level that speak directly to the issues presented in this case. Both cases upheld the constitutionality of the state statutes at issue. Yet, these cases are either completely ignored or hardly mentioned in the opinions of the Justices declaring our statute unconstitutional. Within a few months after *Buckley* was released, the Illinois Supreme Court decided *Schiller Park Colonial Inn, Inc. v. Berz*, 349 N.E.2d 61 (Ill. 1976). The issues in *Schiller* are very similar to the issues in the case sub judice. Liquor licensees challenged the constitutionality of an Illinois statute prohibiting a liquor licensee or any associate of such licensee from making any contribution to any political candidate. Relying on *Buckley*, the Illinois Supreme Court held the statute constitutional, stating that its purpose was to

avoid corruption or the appearance of corruption in the political process.

In 1977, the New Jersey Legislature passed a law substantially similar to the Louisiana statute at issue here today, i.e. completely prohibiting key gambling officials from making campaign contributions. Significantly, this statute was enacted in the wake of *Buckley*. When the law was challenged, the trial court upheld the statute and the New Jersey appellate court affirmed in a lengthy opinion relying on *Buckley*. *Petition of Soto*, 565 A.2d 1088 (N.J. Super. Ct. App. Div. 1989). After the New Jersey Supreme Court denied writs, opponents of the law filed writs with the United States Supreme Court. But the United States Supreme Court denied writs, leaving in place a constitutional statute enacted in 1977, much like the statute at issue here, that completely prohibits certain gambling officials from making *any* campaign contributions to public officials in New Jersey, one of the biggest gambling states in the country.

The concurring opinions misinterpret *Buckley* and its progeny. I agree that *Buckley* states the provisions at issue in this case operate in an area of the most fundamental First Amendment activities. *Buckley*, 424 U.S. at 14, 96 S.Ct. at 632. However, *Buckley* stated that "even a 'significant interference' with protected rights of political association may be sustained if the State demonstrates a sufficiently important interest and employs means closely drawn to avoid unnecessary abridgment of associational freedoms." *Id.* at 25, 96 S.Ct. at 637 (citations omitted). Although the Supreme Court recognized *Buckley* identified a "single narrow exception" to the rule that limits on

political activity were contrary to the freedoms guaranteed by the First Amendment, that is, to limit actual corruption and the appearance of corruption that results from large individual financial contributions, this does not mean that no other "exceptions," or sufficiently important interests, exist to justify limits on political contributions to candidates. Since this sufficiently important interest was found in the federal act's primary purpose, the *Buckley* Court stated that it was unnecessary to look beyond the act's primary purpose in order to find additional constitutionally sufficient justifications and therefore, did not look to see if any other sufficiently important interests existed. Clearly, corruption and the appearance of corruption resulting from other areas, such as gambling, would qualify as an "exception," as it did in *Soto*.

Further, the Court found that the limitation of political contributions entails only a "marginal" restriction due to the fact that a contribution is only "symbolic expression." As one commentator stated,

> This is so because people who would otherwise give amounts greater than the statutory limits are hardly bottled up once they reach the ceiling. Many avenues of communication remain open to them, the Court states, they can "expend such funds on *direct political expression*." [*Buckley*] at 21-22 (emphasis added). In other words, the speaker could buy the newspaper ad or TV commercial or handbills directly, instead of giving the money to the candidate for the candidate to choose how to spend it. If he avoided collaboration with the candidate, his

spending in this fashion would not count as a contribution. *Id.* at 46-47 & n.53.

J. Skelly Wright, *Politics and Communication: Is Money Speech?*, 85 Yale L.J. 1001, 1010 n.40 (1976). The Court stated that there is no communication of the underlying basis for the support since the contributor does not say why he is supporting a certain candidate or even that he agrees with everything that the candidate proposes. Furthermore, the limitation does not infringe on the freedom to discuss candidates and issues. *Buckley,* 424 U.S. at 20-21, 96 S.Ct. at 635-636. The contribution limits only restrict one means of associating with a candidate and still allows a contributor to become a member of a political association and to personally assist in the association's efforts on behalf of candidates. *Id.* at 22, 96 S.Ct. at 636. The Court stated that "the transformation of contributions into political debate involves speech by someone other than the contributor." *Id.* at 20. In a later case, the Supreme Court acknowledged that this type of " 'speech by proxy' . . . is not the sort of political advocacy that [the] Court in *Buckley* found entitled to full First Amendment protection." *California Medical Association v. Federal Election Commission,* 453 U.S. 182, 196, 101 S.Ct. 2712, 2722 (1981).

The prohibition of political contributions is of the marginal type referred to by the Supreme Court in *Buckley* because the prohibition only eliminates "symbolic expression." There is no limitation to speak out on public issues, to support a particular candidate through expression of views, or to join and participate in a political

party. Basically, the persons prohibited from making contributions can support candidates of their choice in virtually every other way. This prohibition is the more limited type of limitation on First Amendment freedoms, as recognized in *Buckley*.

The question then becomes whether the State has asserted a sufficiently important interest in prohibiting contributions from certain persons in the gambling industry. The "exception" in *Buckley* related to the *perception* of undue influence of large contributors to a candidate. *Citizens Against Rent Control/Coalition for Fair Housing v. City of Berkeley*, 454 U.S. 290, 297, 102 S.Ct. 434, 437-438. The Court stated,

> Congress could legitimately conclude that the avoidance of the appearance of improper influence "is also critical . . . if confidence in the system of representative Government is not to be eroded to a disastrous extent." [citations omitted].

Buckley, 424 U.S. at 26-27, 96 S.Ct. at 638. Here, given the history of corruption in gambling and the political process in this State, the perception of undue influence by would-be contributors in the gambling industry to candidates is a far more important State interest than the possible undue influence by large contributors.

The two cases previously discussed, dealing directly with the issues in this case, are particularly persuasive as to the issue of prohibiting certain persons from contributing to political candidates. In *Petition of Soto*, a casino employee challenged the constitutionality of a New Jersey statute that prohibited any casino key employee from contributing any money or thing of value to any political

candidate or committee of any political party. In holding the statute constitutional, the court found a compelling state interest in preventing the appearance of impropriety given the "acknowledged vulnerability of the casino industry to organized crime and the compelling interest in maintaining the public trust, not only in the casino industry but also the governmental process which so closely regulates it." *Petition of Soto*, 565 A.2d at 1098. In addition, the court found that the statute had been narrowly drawn and precisely tailored. The court commented that gambling "is an activity rife with evil" and that it was the pronounced policy of the State "to regulate and control the casino industry with the utmost strictness." The New Jersey Supreme Court and the United States Supreme Court refused to review the *Soto* case.

Schiller Park Colonial Inn, Inc. v. Berz was decided two months after the decision by the Supreme Court in *Buckley*. In *Schiller*, liquor licensees challenged the constitutionality of an Illinois statute prohibiting a liquor licensee or any associate of such licensee from making any contribution to any political candidate. In holding the statute constitutional, the Illinois Supreme Court stated that in view of the substantial state interest involved and the fact that the statute imposed relatively minor limitations upon the licensees' rights, the statute did not violate rights of free speech or association. The court noted that the statute did not prohibit them from engaging in pure speech and the licensees remained free to express their opinions to anyone who would listen, announce their support for candidates, express their political opinions by exercising their voting rights, join political parties, and volunteer

services to those parties or groups. The same is true under our statute at issue today.

Here, the State's interest in preventing corruption or the appearance of corruption by people in the gambling industry with regard to public officials is even more important than the prevention of corruption or the appearance of corruption by large contributors at issue in *Buckley*. As previously noted, the Louisiana Constitution specifically provides that the legislature shall suppress gambling. La. Const. of 1974 art. XII, Sec. 6. During the debate on the legalization of gambling in this State, citizens voiced apprehensions of government corruption. Gambling was only approved after assurances of stringent regulation by the government. La. Rev. Stat. 27:2(A). Clearly, the State has asserted a sufficiently important interest in preventing corruption and the perception of undue influence by people in the gambling industry on candidates for public office given the long history of gambling and corruption of public officials in this State, as shown in Justice Knoll's dissent.

Therefore, the analysis of our statute must focus on whether the ban on political contributions is closely drawn to prevent corruption and the appearance of corruption in the political process. Our statute targets individuals who play a pivotal role in the gambling industry and exercise substantial power in the gambling industry in this State. Merely because some others involved in gambling are not covered by the statute does not defeat the requirement that the statute be "narrowly drawn." As the New Jersey court stated, "[a] public perception that any improper influence has infiltrated the [regulatory] processes, however slightly, would undermine the trust

that is essential to continued confidence in the industry and, what is more important, in state government." *Petition of Soto*, 565 A.2d at 321.

In addition, our statute is not overbroad in scope. As a practical matter, the legislature would have a difficult and probably impossible task of determining exactly which elected officials "will be in a position to exercise influence in the area of [gambling] regulation." *Schiller Park Colonial Inn, Inc.*, 349 N.E.2d at 67. As the Illinois Supreme Court stated,

> The nature of our political system and past history suggests that political officials or public officers may wield powers or possess influence beyond the powers and influence inherent in their official duties. In attempting to prevent [persons interested in gambling] from obtaining influence in the area of [gambling] regulation, therefore, the legislature acted reasonably in proscribing the giving of campaign contributions by [persons interested in gambling] to *any candidate*. (emphasis added).

Id.

Lastly, it is argued that the prohibition does not further the State's interest in preventing corruption or the appearance of corruption since Louisiana law already provides disclosure requirements for candidates and limitations on contributions that an individual can give a candidate. Yet, the United States Supreme Court has stated that the courts shall not "second-guess a legislative determination as to the need for prophylatic measures where corruption is the evil feared." *FEC v. National Right to Work Committee*, 459 U.S. 197, 210, 103 S.Ct. 522, 561

(1982). The Legislature obviously believed that a complete ban on contributions, along with a requirement of complete disclosure, was needed to further the State's interest of preventing corruption or the appearance of corruption in the gambling industry.

For the reasons stated and also for the excellent reasons stated in the opinion of Justice Knoll, I respectfully dissent.

SUPREME COURT OF LOUISIANA

99-CA-2337

CLAUDE M PENN, JR., GLADNEY L. MANUEL, JR., FELICIANA VENTURES, INC. AND MANUEL'S I-10 AUTO & TRUCK STOP, INC.

Versus

STATE OF LOUISIANA, THROUGH THE HONORABLE MURPHY J. FOSTER, JR., GOVERNOR, THE HONORABLE RICHARD P. IEYOUB, ATTORNEY GENERAL, THE SUPERVISORY COMMITTEE ON CAMPAIGN FINANCE DISCLOSURE AND THE DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONS, LOUISIANA GAMING CONTROL BOARD

/s/JTK KNOLL, Justice, dissenting.

I respectfully dissent. By this per curiam, the Court[1] ignores a body of federal and state jurisprudence that

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[1] Because of the unusual formation of this opinion, I collectively refer to the per curiam and the concurrences which elaborate upon that ruling as the "Court."

finds a restriction of a First Amendment right constitutionally permissive when the restriction is narrowly drawn and directly advances an asserted governmental interest, such as in this case: that the election process be not only free from corruption, but also free from the appearance of corruption. The inherent weakness in the Court's position is its total disregard of this State's history, steeped in gambling corruption, and application of the restriction as though it were applicable to the private sector. This omission strikes at the heart of the Legislature's narrowly drawn restrictions and the asserted governmental interest therein.

"[T]he ultimate good desired is better reached by ***free trade in ideas*** – that the best test of truth is the power of the thought to get itself accepted in the competition of the market. . . . " *Abrams v. United States*, 250 U.S. 616, 630 (1919) (Holmes, J., joined by Brandeis, J., dissenting) (emphasis added). At the heart of "free trade" in the political marketplace is the necessity that the election process be not only free from corruption, but also free from the appearance of corruption. I find that La.R.S. 18:1505.2(L)(3)(a)(i), La.R.S. 18:1505.2(L)(3)(b)(i) as applied to La.R.S. 18:1505.2(L)(3)(a)(i) and Rule 107 of Title 42 of the Louisiana Administrative Code permissibly curb the unhealthy political influence or the appearance of unhealthy political influence which persons substantially interested in this State's gaming industry could bring to bear on an election.[2]

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[2] For the fiscal year ending June 30, 1998, the video gaming industry collected $653,375,000 in net gaming proceeds from the devices. For the fiscal year ending June 30, 1997, the

The Louisiana Constitution of 1879 declared gambling a "vice" and the Legislature was directed to enact laws for its suppression. LA. CONST. art. 172 (1879). Louisiana's Constitutions of 1898, 1913, and 1921 all contained similar provisions regarding gambling. *See* LA. CONST. art. 19, § 8 (1921); LA. CONST. arts. 178, 188, 189 (1913); LA. CONST. arts. 178, 188, 189 (1898). Although the delegates to the Constitutional Convention which convened on January 5, 1973, eliminated the moral condemnation of gambling and chose to suppress gambling rather than prohibit it, it is clear that the Legislature continued its role of defining gambling. *Polk v. Edwards*, 626 So.2d 1128, 1141 (La. 1993). Thus, the Louisiana electorate ratified the Constitution of 1974 which followed its predecessor documents with the inclusion of article XII, § 6(B) that "[g]ambling shall be defined by and suppressed by the legislature." In order to understand the reasons for these constitutional declarations throughout the period of Louisiana's statehood, reference to the history of gambling in this State is essential.

Historically, gambling has been recognized as a vice activity which poses a threat to public health and public morals. Although the vice of gambling existed throughout the State during the eighteenth and nineteenth centuries, New Orleans was recognized as the gambling capital. *See* TIMOTHY L. O'BRIEN, BAD BET: THE INSIDE STORY OF THE GLAMOUR, GLITZ, AND DANGER OF AMERICA'S GAMBLING INDUSTRY 99 (1998). The State outlawed gambling in 1812,

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industry collected $618,477,000 in net proceeds from the devices.

but New Orleans received a special exemption that allowed gambling to continue.

When federal troops occupied New Orleans from 1862 to 1877, the Louisiana Lottery Company, a private corporation, went into business. O'BRIEN, *supra*, at 105-06. Even though the Constitution had previously declared lotteries illegal, a constitutional amendment was passed in 1866 and the Louisiana Lottery Corporation was given a 25-year charter to operate. *Id.* The Lottery was marketed nationwide via the mail and branch offices and by 1890 was taking in $28 million yearly. *Id.* at 106-07. Lottery proceeds not only paid for the first waterworks in New Orleans, but this lucre supported the New Orleans charity hospital and upgraded the public schools. *Id.* at 107; Stephanie A. Martz, Note, *Legalized Gambling and Public Corruption: Removing the Incentive to Act Corruptly, or, Teaching an Old Dog New Tricks*, 13 J.L. & Pol. 453, 458-59 (1997). In 1893, the federal government intervened in the Louisiana Lottery and passed a law prohibiting any form of lottery sales and promotion. Martz, *supra*, at 459.

Gambling remained available in New Orleans during the first decades of the twentieth century in small establishments around the city, even though the Constitution had outlawed all gambling. O'BRIEN, *supra*, at 108. In 1934, Huey P. Long allowed slot machines in New Orleans and several casinos outside the city. *Id.* In the 1950s a reform movement ran the larger casinos away, but the slot machines and back-alley casinos stayed in business until the 1970s. *Id.* at 109.

With the boom of the petrochemical industry during the 1970s and 1980s, the State's economy was revitalized.

Id. There was no longer a need for gambling proceeds to fund government projects, that is until the bottom fell out of the oil industry. *See id.* However, when the State's economy went into a tailspin with the decline in the oil industry, the State Legislature, armed with its constitutional authority to "define gambling," turned to legalized gambling as a means out of the fiscal doldrums. *See id.* In a series of enactments in 1991 and 1992, the Legislature passed four acts providing for the licensing of gaming, to-wit: at a land-based casino in New Orleans, La.R.S. 4:601-686; on cruise ships operating out of New Orleans, La.R.S. 14:90(B); on river boats operating on designated rivers in the state, La.R.S. 4:501-562; and by means of video poker machines located throughout the State, La.R.S. 33:4862.1-19.

In *Polk*, although this Court upheld the power of the Legislature to provide for the licensing of gaming, it further recognized that the Legislature's authority to regulate gambling constitutes a legitimate exercise of police power.[3] *Id.* at 1137; *see also Theriot v. Terrebonne Parish Police Jury*, 435 So.2d 515, 516 (La. 1983); *State v. Mustachia*, 152 La. 821, 94 So. 408 (1922); *Ruston v. Perkins*, 114 La. 851, 38 So. 583 (1905). "Defining and prescribing means of suppression are left to the state Legislature and the legislative determination in this regard constitutes an appropriate exercise of police power for the protection of the public." *Theriot*, 435 So.2d at 521. Moreover, in *Polk*

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[3] Police power is "the inherent power of the state to govern persons and things for the promotion of general security, health, morals, and welfare." *Polk*, 626 So.2d at 1142.

this Court further held that the power to suppress gambling and "to determine how, when, where, and in what respects gambling shall be prohibited or permitted" has been constitutionally delegated to the Legislature. *Polk*, 626 So.2d at 1128.

In 1996, the Legislature, pursuant to its constitutional mandate to define and suppress gambling, enacted the Louisiana Gaming Control Law, La.R.S. 27:1 – :392. From the outset, the legislation announced the public policy of this State concerning gaming. In La.R.S. 27:2(A), the Legislature stated:

> The legislature hereby finds and declares it to be the public policy of the state that the development of a controlled gaming industry to promote economic development of the state requires thorough and careful exercise of legislative power to protect the general welfare of the state's people by keeping the state free from criminal and corrupt elements. The legislature further finds and declares it to be the public policy of the state that to this all persons, locations, practices, associations, and activities related to the operation of licensed and qualified gaming establishments and the manufacture, supply, or distribution of gaming devices and equipment shall be strictly regulated.

This legislation further declared that

> [a]ny license, casino operating contract, permit, approval, or thing obtained or issued pursuant to the provisions of this Title or any other law relative to the jurisdiction of the board is expressly declared by the legislature to be a pure and absolute revocable ***privilege*** and ***not a***

> ***right,*** property or otherwise, under the constitution of the United States or of the state of Louisiana.

La.R.S. 27:2(B) (emphasis added); *see also Catanese v. Louisiana Gaming Control Bd.*, 97-1426 (La.App. 1 Cir. 5/15/98), 712 So.2d 666, 670, *writ denied*, 98-1678 (La. 11/25/98), 726 So.2d 30; *Eicher v. Louisiana State Police, Riverboat Gaming Enforcement Div.*, 97-0121 (La.App. 1 Cir. 2/20/98), 710 So.2d 799, 807, *writ denied*, 98-0870 (La. 5/8/98), 719 So.2d 51.

In the same legislative session, the Legislature enacted La.R.S. 18:1505.2(L) relative to campaign finance. As the Court herein recognized, the provisions of La.R.S. 18:1505.2(L) prohibit persons substantially interested in the gaming industry of this State, as more particularly defined in the statute, from making campaign contributions, loans, or transfers of funds to any candidate, any political committee of any such candidate, or any other political committee which supports or opposes any candidate. The purpose of this prohibition against campaign contributions from this segment of society is set out in La.R.S. 18:1505.2(L)(1):

> [I]t is essential to the operation of ***effective democratic government*** in this state that ***citizens have confidence in the electoral process*** and that elections be conducted so as to ***prevent influence and the appearance of influence*** of candidates for public office and of the election process by special interests, particularly by persons substantially interested in the gaming industry of this state. (emphasis added).

It is against this well-defined backdrop that I view the provisions now before us, and it is this setting that I find the Court fails to reference in its assessment of the narrow restriction on relators' First Amendment rights which directly advances an asserted governmental interest. Partly because of this State's history and in part because of the constitutional mandate that the Legislature suppress gambling, I find that the Court today impermissibly interferes with the legislative determination as to the need for prophylactic measures where corruption or the appearance of corruption is the evil feared. *See Federal Election Comm'n v. National Right to Work Comm.*, 459 U.S. 197, 210 (1982). "These interests directly implicate 'the integrity of our electoral process, and, not less, the responsibility of the individual citizen for the successful functioning of that process.' " *Id.* at 208 (quoting *United States v. Automobile Workers*, 357 U.S. 567, 570 (1957)).

Although the Court references *Buckley v. Valeo*, 424 U.S. 1 (1976) (per curiam), as the seminal case on campaign contributions and expenditures, I find that it only pays lip service to the opinion as a whole and misconstrues its holding as applicable herein. Without even entering the foray of whether *Buckley* requires strict scrutiny of the legislative enactments now implicated,[4] I find

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[4] Since *Buckley* held that "a limitation upon the amount that any one person or group may contribute to a candidate or political committee entails ***only a marginal restriction upon the contributor's ability to engage in free communication,***" *id.* at 20, I find that it skirted the question of strict scrutiny and instead applied a balancing test which compared the legislative need for the limitation on political contributions to the degree of burden

that the State has well demonstrated an important governmental interest in the enactment of legislation to insure an effective democratic government and has closely drawn the means to avoid the unnecessary abridgement of any associational freedom implicated. Thus, even if the legislation significantly interferes with these video draw poker licensees' protected rights of political association, I find no constitutional impingement which would interdict this legislation, because the restriction is narrowly drawn and directly advances an asserted governmental interest.

Buckley recognized the legislative proponents' assertion that the "primary interest served by the limitations [on campaign spending] is the prevention of corruption and the appearance of corruption spawned by the real or imagined coercive influence of large financial contributions on candidates' positions and on their actions if elected to office." *Id.* at 25. The *Buckley* opinion further embodies the principle that our system of democracy is undermined to the extent that large political contributions are given or appear to be given to secure a political quid pro quo from potential and current office holders. *Id.* at 26-27.

Even if *Buckley* protects both political expression and political association, it nonetheless stands for the proposition that these constitutional interests may be impeded if the state has a sufficiently compelling countervailing interest, and the stricture is narrowly tailored to meet the

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placed on First Amendment freedoms. Under either test, however, I find the legislative provisions constitutional.

state's concern. *Id.* at 28; *see also 44 Liquormart, Inc. v. Rhode Island*, 517 U.S. 484, 528-29 (1996) (O'Connor, J., joined by Rehnquist, C.J., and Souter and Breyer, JJ., concurring in part and concurring in the judgment) (noting that for a commercial free speech restriction to pass constitutional muster, it must be decided whether the regulation "directly advances the governmental interest asserted, and whether it is not more extensive than is necessary to serve that interest." *Central Hudson Gas & Elec. Corp. v. Public Serv. Comm'n of N.Y.*, 447 U.S. 557 (1980)).

In the present case, the Legislature, pursuant to its constitutional mandate to define and suppress gambling and with full knowledge of this State's corrupt gambling history, has narrowly excluded persons substantially interested in this State's gaming industry, to include video draw poker licensees, from making campaign contributions. Instead of a blanket regulation covering every individual as in *Buckley*, the Louisiana Legislature defined well-delineated restrictions on a strictly regulated industry in imposing this ban on campaign contributions. I would find that the Louisiana Legislature has enacted narrowly tailored statutes to achieve the expressed, compelling state interest.[5]

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[5] Contrary to the Court's argument, because the statutes prohibit only ***some***, but not all, First Amendment activity and apply to ***selected***, but not all, members of the video poker industry, the Legislature has enacted statutes narrowly tailored to achieve the expressed compelling state interest, thus, satisfying ***any*** constitutional strict scrutiny analysis.

It is also significant to me that these legislative provisions only affect one aspect of political expression, *i.e.*, the making of campaign contributions. Notwithstanding this ban, these licensees can nonetheless participate in the direct exercise of their First Amendment speech rights, *e.g.*, they may make independent expenditures supporting or opposing particular candidates; they may urge their employees to support or oppose particular candidates; corporate officers and employees may openly support individual candidates by displaying yard signs and voluntarily working in political campaigns; they may even sponsor phone banks to encourage persons to vote.

It has long been held that neither the right to associate nor the right to participate in political activities is absolute. *United States Civil Serv. Comm'n v. National Ass'n of Letter Carriers*, 413 U.S. 548, 567 (1973). In stark contrast to the direct speech rights that these licensed gaming entities and individuals can utilize, there are numerous instances where individuals are absolutely barred from the exercise of their First Amendment rights in the political process: classified civil servants and members of the Civil Service Commission, LA. CONST. art. X, § 9; judges, LA. CODE OF JUDICIAL CONDUCT, Canon 7; members of the Louisiana Board of Ethics, La.R.S. 42:1132(B)(3)(e). In the present case, I simply view the limitations of La.R.S. 18:1505.2(L) as *restrictions* that these licensees must abide by in order to engage in the *privilege* of licensed gaming activities.

Even though the present legislation goes beyond *Buckley's* sanctioned limitation on political contributions, I do not find that the ban of such political contributions impermissibly offends the relators' First Amendment

rights because of the well demonstrated State interest in the regulation of this industry and the narrowness of the restriction drawn. In this regard, I wholeheartedly subscribe to the dissent of Justice Victory in the case *sub judice* and his reliance on *Petition of Soto*, 565 A.2d 1088 (N.J. Super. Ct. App. Div. 1988), *certif. denied*, 121 N.J. 608 (1989), *cert. denied*, 496 U.S. 937 (1990) and *Schiller Park Colonial Inn, Inc. v. Berz*, 63 Ill.2d 499, 349 N.E.2d 61 (1976). As the New Jersey court observed in *Soto*, the state has a compelling state interest in upholding the integrity of the political process from corruption. Considering the Legislature's definition of gambling in this State and its mandate to suppress gambling, I find that a total prohibition on campaign contributions from this industry's substantial members directly advances an asserted governmental interest by the Legislature.

I likewise find the argument unpersuasive that this State's enactment of disclosure requirements for political contributions obviated the necessity for the more stringent ban adopted by the Legislature. As noted in *Buckley* where a similar argument was made, the Legislature was entitled to conclude that disclosure was only a partial answer to the problem. *Buckley*, 424 U.S. at 28. Thus, I find that the disclosure requirements did not supplant the Legislature's decision to require more.

The courts have repeatedly recognized that the legislative branch of government maintains a strong, vital interest in protecting the political process from distortion and corruption. *United States v. Classic*, 313 U.S. 299, 317-320 (1941); *Burroughs v. United States*, 290 U.S. 534, 545 (1934); *Ex Parte Yarbrough*, 110 U.S. 651, 657 (1884). "Nothing bars us from choosing . . . a process wherein

ideas and candidates prevail because of their inherent worth, not because . . . one side puts on the more elaborate show of support. Nothing in the First Amendment bars us from those steps." J. Skelly Wright, *Politics and the Constitution: Is Money Speech?*, 85 Yale L.J. 1001, 1005 (1976). Albeit that there are industries that participate in the election process that are as well-monied as the gambling industry, that which differentiates the latter is its existence as an "absolute revocable privilege," its close governmental regulation, and its undistinguished place in this State's history.

APPENDIX 2

CLAUDE M. PENN, JR., GLADNEY L. MANUEL, JR., FELICIANA VENTURES, INC., AND MANUEL'S I-10 AUTO & TRUCK STOP, INC.	*	SUIT NO. 458,208 DIV. "N"
VERSUS	*	19TH JUDICIAL DISTRICT COURT
STATE OF LOUISIANA, THROUGH THE HONORABLE MURPHY J. FOSTER, GOVERNOR, THE HONORABLE RICHARD P. IYEOUB [sic], ATTORNEY GENERAL, AND THE SUPERVISORY COMMITTEE ON CAMPAIGN FINANCE	*	PARISH OF EAST BATON ROUGE
	*	STATE OF LOUISIANA

JUDGMENT ON DECLARATORY JUDGMENT AND ON WRIT OF PERMANENT INJUNCTION

(Filed June 15, 1999)

This matter having come before the Court on June 2, 1999, at 11:00 a.m. in a hearing to determine the propriety of the issuance of a writ of a permanent injunction and for declaratory judgment on the constitutionality of LSA-R.S. 18:1505.2(L)(3)(a)(i), LSA-R.S. 18:1505.2(L)(3)(b)(i) insofar as it is applied to LSA-R.S. 18:1505.2(L)(3)(a)(i), and Rule 107 of Title 42 of the Louisiana Administrative Code, insofar as Rule 107 precludes candidate and political committee contributions by video draw poker licensees; All parties being represented by counsel, Mr.

Brett A. Sulzer and Mr. Frank D. Blackburn for the petitioners, Mr. R. Gray Sexton and Ms. Maris McCrory for the State of Louisiana, through the Honorable Murphy J. Foster, Governor and the Supervisory Committee on Campaign Finance Disclosure and Mr. Rand Dennis for the Honorable Richard P. Iyeoub [sic], Attorney General and the Department of Public Safety and Corrections, Louisiana Gaming Control Board;

CONSIDERING the petition filed on behalf of the petitioners and the briefs and oral arguments of both parties in an evidentiary hearing held on June 2, 1999, and having duly considered the applicable law controlling thereof;

IT IS ORDERED, ADJUDGED AND DECREED that, for oral reasons stated in open court on June 4, 1999, at 11:00 a.m., LSA-R.S. 18:1505.2(L)(3)(a)(i), LSA-R.S. 18:1505.2(L)(3)(b)(i) insofar as it is applied to LSA-R.S. 18:1505.2(L)(3)(a)(i), and Rule 107 of Title 42 of the Louisiana Administrative Code, insofar as Rule 107 precludes candidate and political committee contributions by video draw poker licensees are hereby declared unconstitutional;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that, a permanent injunction as prayed for in the petition issue, permanently enjoining and restraining the defendants from enforcing LSA-R.S. 18:1505.2(L)(3)(a)(i), LSA-R.S. 15:1505.2(L)(3)(B)(i) insofar as it is applied to LSA-R.S. 18:1505.2(L)(3)(a)(i), and Rule 107 of Title 42 of the Louisiana Administrative Code, insofar as Rule 107 precludes candidate and political committee contributions by video draw poker licensees;

Baton Rouge, Louisiana this 15th day of June, 1999.

/s/ Jewel E. Welch
Judge, 19th Judicial District
Court

CLAUDE M. PENN, JR., ET AL	SUIT NO. 458,208 DIV. N 19TH JUDICIAL DISTRICT COURT
V.	PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA, ET AL	STATE OF LOUISIANA

FRIDAY, JUNE 4, 1999
ORAL REASONS FOR JUDGMENT
THE HONORABLE JEWEL E. "DUKE" WELCH, JUDGE PRESIDING

BY THE COURT:

I WANT TO FIRST OF ALL TAKE THIS OPPORTUNITY TO COMPLIMENT THE LAWYERS THAT WERE HERE AND DID THE ARGUMENTS ON WEDNESDAY. ALL OF THE ARGUMENTS WERE GOOD, TO THE POINT AND BROUGHT OUT THE REAL FACTS WITH REGARD TO THE ISSUE BEFORE THIS COURT. THE ISSUE IS REALLY VERY SIMPLE. AND THAT IS, IS THE STATUTE IN QUESTION CONSTITUTIONAL? THE COURT FEELS THAT THE STATUTE IS UNCONSTITUTIONAL AND SO RULES.

THE COURT IS MINDFUL THAT LEGISLATIVE ENACTMENTS ARE ENTITLED TO AND ARE PRESUMED CONSTITUTIONAL. HOWEVER, WHEN FIRST AMENDMENT RIGHTS ARE RESTRICTED AS THIS STATUTE DOES, STRICT SCRUTINY APPLIES. INDIVIDUALS, CANDIDATES, POLITICAL COMMITTEES, POLITICAL PARTIES HAVE FIRST AMENDMENT RIGHTS TO MAKE CONTRIBUTIONS. WHEN WE START RESTRICTING THOSE RIGHTS IT INVOKES THE FIRST AMENDMENT OF THE CONSTITUTION. AND

AGAIN, APPLYING THE STRICT SCRUTINY STANDARD THAT THE COURT IS REQUIRED TO APPLY, THE STATUTE DOESN'T MAKE SENSE. AND HERE IS WHY IT DOESN'T MAKE SENSE.

THERE ARE IN PLACE VERY STRICT LEVELS OF SCRUTINY FOR PEOPLE WHO ENGAGE IN THE BUSINESS OF GAMBLING. THERE ARE SEVERAL TIERS OF GOVERNMENT WHO VIGOROUSLY ENFORCE THE GAMBLING STATUTES IN THE STATE OF LOUISIANA. FURTHER, WITH REGARD TO THE ELECTORAL PROCESS THE CAMPAIGN ETHICS COMMITTEE ENFORCES THE CAMPAIGN LAWS THAT REQUIRE FIRST OF ALL, DISCLOSURE OF ALL CAMPAIGN CONTRIBUTIONS, WHO THEY ARE MADE FROM. SECONDLY, THERE ARE IN PLACE CAMPAIGN LIMITS THAT LIMIT THE AMOUNT THAT ANY INDIVIDUAL CAN CONTRIBUTE IN A POLITICAL CAMPAIGN. THOSE ARE THE SAFEGUARDS OF THE ELECTORAL PROCESS. KEEPING PEOPLE WHO ARE IN THE GAMING INDUSTRY IN LINE IS THE RESPONSIBILITY OF ANOTHER TIER OF GOVERNMENT. AND BASED UPON THAT THE STATUTE AS CONFECTED BY THE LEGISLATURE IS TOO RESTRICTIVE.

THE ELECTORAL PROCESS IS TOO PRECIOUS TO START EXCLUDING PEOPLE FROM CONTRIBUTING, FROM PARTICIPATING IN THAT PROCESS. AND IF WE START DOWN THAT ROAD THERE IS A REAL DANGER IN HOW FAR WE GO. SO WITH THAT BEING SAID, THANK YOU ALL VERY MUCH. THE COURT WILL SIGN A JUDGMENT ACCORDINGLY.

* * *

CERTIFICATE

I, KIM W. FORD, CCR, OFFICIAL COURT REPORTER, NINETEENTH JUDICIAL DISTRICT COURT, PARISH OF EAST BATON ROUGE, STATE OF LOUISIANA, DO HEREBY CERTIFY THAT THE FOREGOING PAGES CONSTITUTE A TRUE AND ACCURATE TRANSCRIPT OF THE AFORESAID MATTER AS TAKEN BY ME ON THE STENOTYPE MACHINE, TO THE BEST OF MY KNOWLEDGE AND ABILITY.

WITNESS MY HAND THIS 4TH DAY OF JUNE, 1999.

/s/ Kim W. Ford
KIM W. FORD
OFFICIAL COURT
REPORTER
19TH JUDICIAL DISTRICT
COURT
CCR #96020

APPENDIX 3

Supreme Court of Louisiana

FOR IMMEDIATE NEWS RELEASE NEWS RELEASE #101

FROM: CLERK OF THE SUPREME COURT OF LOUISIANA

On the ***24th day of November, 1999*** the following action was taken by the Supreme Court of Louisiana in the case(s) listed below:

REHEARING(S) DENIED:

98-K – 2078 STATE OF LOUISIANA v. JERRY SMITH, GARRICK J. WATTS, BERNARD MYLES
(Parish of Ascension)
CALOGERO C.J., not on panel.
JOHNSON J., would grant a rehearing.

98-KK – 2146 STATE OF LOUISIANA v. LEE MISKELL
(Parish of Orleans)
CALOGERO C.J., not on panel.
KIMBALL J., would grant a rehearing.
JOHNSON J., would grant a rehearing.

99-CA – 2337 CLAUDE M. PENN, JR., GLADNEY L. MANUEL, JR., FELICIANA VENTURES INC. AND MANUEL'S I-10 AUTO TRUCK STOP, INC. v. STATE OF LOUISIANA, THROUGH THE HONORABLE MURPHY J. FOSTER, JR. GOVERNOR, THE HONORABLE RICHARD P. IEYOUB, ATTORNEY GENERAL, THE SUPERVISORY COMMITTEE OF CAMPAIGN FINANCE DISCLOSURE AND THE DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONS, LOUISIANA GAMING CONTROL BOARD

(Parish of E. Baton Rouge) (Two Applications, both denied)
MARCUS J., not on panel.
VICTORY J., would grant a rehearing.
TRAYLOR J., would grant a rehearing.
KNOLL J., would grant a rehearing..

REHEARING NOT CONSIDERED, NOT TIMELY FILED:

99-B - 1828 IN RE: MICHAEL A. HARRIS
KIMBALL J., not on panel.

APPENDIX 4

CLAUDE M. PENN, JR., GLADNEY L. MANUEL, JR., FELICIANA VENTURES, INC., AND MANUEL'S I-10 AUTO & TRUCK STOP, INC.	SUIT NO. 458,208 DIV. N
VERSUS	19th JUDICIAL DISTRICT COURT
STATE OF LOUISIANA, THROUGH THE HONORABLE MURPHY J. FOSTER, JR., GOVERNOR, THE HONORABLE RICHARD P. IEYOUB, ATTORNEY GENERAL, THE SUPERVISORY COMMITTEE ON CAMPAIGN FINANCE DISCLOSURE AND the DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONS, AND the LOUISIANA GAMING CONTROL BOARD	PARISH OF EAST BATON ROUGE
	STATE OF LOUISIANA

AFFIDAVIT OF EDWARD J. STEIMEL

I received a bachelor of arts degree in English with an emphasis in Journalism at Arkansas State University in 1949. I am currently serving as the Development Director for the College of Engineering, Louisiana State University Agricultural & Mechanical College, Baton Rouge,

Louisiana. I was president of Citizens Action for Gambling's End (CAGE) from 1995 until the organization disbanded in 1998.

From 1954 through 1975 I was executive director of the Public Affairs Research Council (PAR). For the years 1975 through 1988, I served as president of the Louisiana Association of Business & Industry (LABI). While with LABI, I actively opposed the introduction of gambling in Louisiana. I was aware of the provisions of the 1921 Louisiana Constitution which required the legislature to define and suppress gambling and I attended all of the sessions of the 1973 Constitutional Convention which resulted in a similar constitutional prohibition. It was my understanding that the prohibition was designed to suppress the vice of gambling. Historically, gambling has always been viewed as a vice throughout this country as it has a corrosive effect on the public, attracts other vices, and creates the specter of "something for nothing." I am personally opposed to the gambling industry because it does not generate revenue. Rather, it profits by taking dollars from others. In my opinion, the only distinction between "gambling" and "gaming" is the "bl."

LABI was instrumental in defeating the introduction of gambling for six legislative sessions after then Governor Edwin W. Edwards had announced his intention to introduce casino gaming and a lottery in Louisiana. LABI's success in its opposition was based on its clout with the legislature. This clout was attained because it was the largest supporter of legislative candidates. LABI prevailed in 75% of the more than 700 elections it participated in, presumably because of its financial and organizational support of candidates. It was only after I left

LABI and the organization withdrew its opposition to gambling that gaming was legislatively authorized.

It is my experience that the gambling industry in Louisiana, and across the United States, is highly organized. The industry is highly motivated toward advancing its business opportunities in Louisiana and elsewhere and has been attempting to advance its interests by making campaign contributions and hiring lobbyists.

In my active opposition to the gambling I have traveled across the State talking to various groups about gambling. It is my impression from speaking with a cross section of people on this issue that the public perceives the gambling industry as associated with corruption. This perception has been heightened by recent criminal prosecutions involving elected officials.

In my experience, limiting campaign contributions by gaming interests would tend to frustrate the undue influence that industry might otherwise have in the election process. I base this statement on my experience with supporting candidates through LABI. LABI never asked for a commitment on a specific point from the candidates it supported. Rather, it studied candidates and supported them based on their position on certain issues. It was expected that the candidates would continue to perform consistently on those issues. I believe the gambling industry operates similarly. I cannot think of any other way that the government could guard against influence and the appearance of influence by gaming interests in the election process other than through the enactment of a prohibition on campaign contributions.

Gaming interests have other methods to develop constitutionally protected free speech considerations. For example, gaming licensees have made significant charitable contributions, including contributions to universities, churches, and organizations such as the Red Cross. These contributions have worked to silence persons who might otherwise oppose gambling.

In my opinion, there is a nexus between a restriction against campaign contributions by gaming interests and showing of the public's perception of the independence and freedom from undue influence of candidates for election to public office.

The type of influence proponents of gaming attempt to assert on the legislative process and election process includes favorable votes and special privileges. Also, gaming is interested in the actions of local governing authorities with respect to ordinances concerning zoning and the other permissive uses that are routinely regulated by local governmental authorities.

In my judgment, a ban on campaign contributions furthers a substantial governmental interest in that it avoids undue influence by a legalized vice. I cannot think of another restriction that the government could use to effectively create a barrier against undue influence in the election process. I am not aware of any less intrusive or less onerous manner in which the government could guard against both the influencing and appearance of influencing of candidates by these special interest groups.

/s/ Edward J. Steimel
Edward J. Steimel

SWORN TO AND SUBSCRIBED BEFORE ME this 1st day of June, 1999, Baton Rouge, Louisiana.

/s/ Maris LeBlanc McCrory,
Notary

APPENDIX 5

CLAUDE M. PENN, JR., GLADNEY L. MANUEL, JR., FELICIANA VENTURES, INC., AND MANUEL'S I-10 AUTO & TRUCK STOP, INC.	SUIT NO. 458,208 DIV. N
VERSUS	
STATE OF LOUISIANA, THROUGH THE HONORABLE MURPHY J. FOSTER, JR., GOVERNOR, THE HONORABLE RICHARD P. IEYOUB, ATTORNEY GENERAL, THE SUPERVISORY COMMITTEE ON CAMPAIGN FINANCE DISCLOSURE AND THE DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONS, AND THE LOUISIANA GAMING CONTROL BOARD	19th JUDICIAL DISTRICT COURT PARISH OF EAST BATON ROUGE STATE OF LOUISIANA

AFFIDAVIT TESTIMONY OF HILLARY J. CRAIN

STATE OF LOUISIANA
PARISH OF EAST BATON ROUGE

BEFORE ME, the undersigned Notary, personally appeared:

HILLARY J. CRAIN

known to me to be the person whose name is subscribed hereto, who did depose and state as follows:

My name is Hillary J. Crain, and I am the Chairman of the Louisiana Gaming Control Board (hereinafter referred to as "LGCB"). I am of the full age of majority, have never been convicted of a crime involving moral turpitude, and am fully competent to provide this testimony.

I have been the chairman of the LGCB since its inception in 1996 and as such, I am intimately familiar with all aspects of gaming law in the state of Louisiana. I also have first hand knowledge of the history of gaming in Louisiana and the general public's perception of the gaming industry. As Chairman of the LGCB, I have the responsibility and authority to carry out the legislative mandate to strictly regulate gaming in Louisiana and to direct the promulgation and enforcement of rules and regulations pertaining to gaming. Based upon my experience, I believe that the people of Louisiana are acutely aware of and concerned with the control of the gaming industry in Louisiana and its impact on their lives.

Gambling in Louisiana has traditionally been viewed as an illegal activity. Its influence in terms of public welfare and morality is so important that it is governed directly by the Louisiana Constitution itself. The legislature has recognized the concentration of wealth that exists in the gaming industry and how the industry as a group or individually can wield the disproportionate weight of that wealth.

Thus, in enacting LSA-R.S. 18:1505, 2L, the legislature was rightfully concerned not only with the actual integrity of the political process as it relates to gaming but also the appearance of integrity needed to maintain public confidence.

Based upon the large volume of revenues generated in the gaming industry and the corresponding potential for political abuse, I, like the Louisiana legislature, believe that the state has a significant interest in enacting and enforcing laws designed to ensure that the political process is free from corruption or even the appearance of corruption. To that end, I believe that LSA-R.S. 18:1505.2 L is a constitutionally valid and politically and socially responsible legislative attempt to avoid the threat of corruption or undue influence over the political process by certain gaming interests. Specifically, this legislation, which prohibits campaign contributions by truck stop entities, their owners, officers, directors, partners, trustees, senior management employees, key employees and all of their spouses is both appropriate and desirable in that it is a specific and narrowly drawn law which will prohibit these entitles and persons from exerting undue influence and will aid in stimulating public confidence in the political process as it relates to gaming.

One need only review the many different newspaper articles by major newspapers in the state of Louisiana during the past few years reflecting political scandals related to gaming in Louisiana to understand the legislative and public concern with avoiding even the appearance of the possibility of corruption of the political process. See, for example, political corruption

scandals cited in Footnote Three of Justice Bleich's dissenting opinion in *Charles A. Brown v. State of Louisiana*, 96-2204 (La. 10/15/96), 680 So.2d 1179. In the case of LSA-R.S. 18:1505.2 L, I believe this legislation has been carefully and narrowly drawn to address the very real concern regarding the potential for corruption of the political process by this particular segment of the video poker gaming industry. Unlike lounges, restaurants, and hotels or motels, all of which may only own or operate a few video poker devices, truck stops in Louisiana may own and/or operate up to fifth (50) video poker devices. Indeed, for the fiscal year ending June 30, 1998, alone, truck stops in Louisiana collected over Two Hundred Twenty-four Million Dollars ($224,000,000) in net gaming proceeds from video poker devices. Similarly, in 1997, truck stops collected over Two Hundred Five Million Dollars ($205,000,000) in net device revenues. Furthermore, in the fiscal year 1998, truck stops paid almost Seventy-Three Million Dollars ($73,000,000) in state taxes on the device revenues. Obviously, where such huge dollar amounts are involved, the potential for abuse and undue influence exists. Accordingly, I believe that the subject statute involved in this litigation is a sensible and necessary step to avoid political corruption and/or the appearance of such corruption.

I believe R.S. 18:1505 is drawn as narrowly and specifically possible to accomplish the desired legislative intent. Obviously, the legislature chose to exclude lounges, restaurants, and hotels, from the campaign contribution prohibition because the potential for abuse from these entities which own and/or operate only a few

video poker devices is nowhere near as great as the influence which may be exerted by the much more powerful and wealthy truck stops. Indeed, under current law, were it not for the campaign contribution prohibition found in R.S. 18:1505, a single truck stop could contribute to a candidate for a major state office far more than the single $5,000 limitation from the truck stop corporate entity, $5,000 from the principal owner, $5,000 from the owner's spouse, and $5,000 from each and every owner of ten (10%) percent or more of the truck stop entity, $5,000 from each director, $5,000 from each trustee, $5,000 from each partner, $5,000 from each senior management employee, $5,000 from each key employee, and $5,000 from each spouse of the foregoing. Clearly, the state has a significant interest in prohibiting such contributions and influence by this segment of the gaming industry.

While the subject statute's prohibition of campaign contributions may be viewed by some as an infringement upon rights of free speech, I believe it is only a limited infringement and is absolutely necessary to keep the political process free of corruption and the appearance of corruption. In this regard, I believe that statute restricts the truck stop owners in the least restrictive manner possible and would note that it does not prohibit these licensees from engaging in any other type of free speech. For example, these licensees may express their political opinions to anyone who will listen; they may announce their support for candidates or political parties; they can express their political opinions by exercising their voting rights; they may join political parties or groups and volunteer services to those parties or groups; and, even

more significantly, they may retain lobbyists. Furthermore, the statute affects a relatively small percentage of persons in the gaming industry.

In summary, in reviewing R.S. 18:1505, I believe one must always remember that gaming has historically been viewed in Louisiana and elsewhere as a vice. Indeed, the legislature has been constitutionally directed to define and suppress gambling in Louisiana. Make no mistake about it; the video draw poker industry in Louisiana is highly organized and highly motivated toward advancing its business opportunities in the gaming industry in Louisiana. Thus, it cannot be seriously argued that limiting campaign contribution by truck stop owners does not legitimately serve the asserted state interest in avoiding undue influence in the political process and/or the appearance of such influence. Indeed, I am aware of no other manner in which the government could guard against the influence and the appearance of influence by these gaming interests in the election process other than through the enactment of the legislation at issue herein.

Further affiant saith not.

/s/ Hillary J. Crain
Hillary J. Crain

SWORN TO AND SUBSCRIBED BEFORE ME this 2nd day of June, 1999

/s/ Kathleen M. Allen
NOTARY

APPENDIX 6

[LOGO]

CITIZEN Link
RESEARCH PAPERS

Family Issues in Policy and Culture

Released October 1, 1997

Gambling and Political Corruption

by Ronald A. Reno

Gambling "has more of a history of corruption that any other industry," former Illinois Senator Paul Simon testified at the opening meeting of the National Gambling Impact Study Commission in June 1997. Indeed, Simon's statement has abundant basis in fact. Gambling-related political corruption became so widespread in the 1800s that every state in the union eventually outlawed lotteries and all other forms of gambling. Today, history appears to be repeating itself. The recent wave of gambling expansion in the United States has spawned another epidemic of political corruption.

- Two former West Virginia Senate Presidents were sentenced to prison for taking money from gambling interests. One was charged with soliciting $15,000 from a casino company to help pass a bill that would have allowed casinos in the state. The other was convicted for accepting an illegal $10,000 payment from gambling interests.[1]

- Nineteen Arizona legislators and lobbyists were caught on videotape taking money after agreeing to vote

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[1] A.V. Gallagher, Associated Press, "Former W. Va. Senate President Sentenced to 5 Years, Fined $10,000," December 14, 1989.

for legalized gambling.[2] Six lawmakers eventually accepted plea bargains; another was convicted of conspiracy for taking $25,000 from an undercover agent.[3]

• Three Hilton Hotels executives – one a board member – resigned in the wake of an investigation regarding the corporation's attempts to obtain a riverboat license in Kansas City, Missouri. Hilton allegedly paid $250,000 to a business headed by the former chairman of the Kansas City Port Authority, whose approval Hilton needed to lease city property for the casino. The former Chairman later cast the deciding vote awarding Hilton the lease.[4]

• Missouri's House Speaker of 15 years resigned in 1996 in the wake of a federal investigation induced by charges of gambling-related dealings. According to media reports, the ex-speaker demanded that a gambling company direct payments of $16 million toward the ex-speaker's friends and business associates in order to secure a casino license in the state.[5]

• In Kentucky, 15 state legislators were eventually convicted or pled guilty to charges stemming from Operation

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[2] Sally Ann Stewart, "New Tarnish on Arizona's Image; Bribe Case Has State 'in Shock,' *USA Today*, February 13, 1991, p. 6A.

[3] John Pacenti, "Walker Found Guilty of Conspiracy in AzScam," Associated Press, November 5, 1992.

[4] Bruce Orwell, "Hilton Officials Resign Amid Focus on Missouri Casino," *Wall Street Journal*, October 14, 1996, p. B7.

[5] Joe Stephens, "Powerbrokers Await Windup of Grand Jury," *Kansas City Star*, October 11, 1996, p. A1.

Boptrot, an FBI investigation centering on influence peddling and bribery involving the state's horse racing industry.[6]

• The FBI launched a two-year investigation into the activities or more than a dozen Louisiana legislators suspected of accepting bribes from gambling interests.[7] One former state senator, who chaired the senate committee overseeing gambling matters, has been convicted of racketeering-related charges in the investigation.[8] A representative who sat on a similar committee in the Louisiana House resigned after admitting to using his influence to help two organized-crime-controlled video poker companies in exchange for gifts.[9]

• Seventeen South Carolina lawmakers were convicted of or pled guilty to charges related to a federal sting operation labeled "Operation Lost Trust." The investigation centered around allegations that legislators accepted gambling money in exchange for pro-gambling votes on horse racing legislation.[10]

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[6] Bill Estep, "BOPTROT Leaves Legacy of Ethics Rules," *Lexington Herald-Leader*, August 2, 1995, p. A1.

[7] Jim Yardley, "Don't Bet on Gambling; Louisiana Bribery Suspected," *Atlanta Journal and Constitution*, September 5, 1995, p. 4B.

[8] Joe Gyan, Jr., "Bankston Convicted on 2 Counts; Rayburn Acquitted," *Baton Rouge Advocate*, June 28, 1997, p. 1A.

[9] Joe Gyan, Jr., "Guzzardo Quits After Guilty Plea," *Baton Rouge Advocate*, May 2, 1996, p. 1A.

[10] Associated Press, "Former State Representative Sentenced to Prison for Selling Votes," April 24, 1992.

• In 1997, the former chairman of the Indiana House Ways and Means Committee was indicted on charges of bribery, perjury and filing false finance reports. The charges stemmed from allegations that the former chairman took bribes from the lead engineering firm in a riverboat casino project in the state.[11]

• Four of Atlantic City's last seven mayors have been found guilty of or pleaded guilty to corruption charges.[12][]

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[11] Thomas P. Wyman and Beth Menge, "Bribery in Casino Contract Charged," *Cincinnati Enquirer*, April 29, 1997, p. B1.

[12] Jerry Gray, "Sharpe James Wins a Third Term as Mayor of Newark," *New York Times*, May 11, 1994, p. B7.